SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 587

SAMUEL R. TOUCEY,

Petitioner,

vs.

NEW YORK LIFE INSURANCE COMPANY,
A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

SAMUEL R. TOUCEY,
Pro Se.

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Samuel R. Toucey, respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Eighth District to review a decree of that court entered June 29th, 1940, affirming a decree of the United States District Court for the Western Division of the Western District of Missouri. A certified transcript of the record in this case, including the proceed-

ings in said United States Circuit Court of Appeals for the Eighth Circuit is to be furnished by the Circuit Court of Appeals of Eighth District direct to the Supreme Court of the United States under the law, rules and regulations of the Supreme Court.

On April 29th, 1924, appellant paid in full to the New York Life Insurance Corporation's agent the amount of $2182.00 for a full 1924 premium of twelve (12) months on New York Life policy Number 8 611 895, said to go into force and effect January 2nd, 1924.

Policy No. 8 611 895 in bold type on front page states policy in force and effect *January 2nd, 1924*, premium paid and acknowledged for year 1924, policy terms (in ambiguous phraseology) Life and Accident double indemnity: On back page of policy No. 8 611 895, by pen and ink endorsement by the New York Life Home office, policy No. 8 611 895 went into "force and effect" *June 4, 1924.* Component part of policy No. 8 611 895 all Federal court trial exhibits—1) photostatic copy of medical examination application signed jointly by appellant and medical examiner, dated November 13th, 1923, states terms of policy (if one issued) Ordinary Life; 2) New York Life letter dated January 9th, 1924, addressed to appellant (policy No. 8 611 895 not enclosed) urges appellant to buy policy No. 8 611 895, states policy went into force and effect January 2nd, 1924, terms Life and Accident double indemnity, 1924 premium $2182.00, etc.

Policy No. 8 611 895 issued by defendant upon the life of petitioner, put in force and effect by defendant Home office June 4th, 1924, by policy back page pen and ink notation, front page of policy, in bold type, permitted to remain stating policy went into force and effect January 2nd, 1924, face amount of ($50,000.00) dollars, double that amount in event of ACCIDENTAL DEATH, and providing for payment of five hundred ($500.00) per month and waiver of premiums in event of total, permanent disability.

On October 26th, 1935, petitioner commenced a suit in equity against defendant in the Circuit Court of Jackson County, Missouri, at Kansas City: The petition in that suit alleged generally, that in April, 1933, while said policy was in force, petitioner became permanently and totally disabled and that in August, 1934, respondent by fraud and concealment procured the reduction by fifty (50) per cent of the face amount of benefits of said policy, and in October, 1934, respondent by "fraud" and concealment procured the cancellation of said policy for alleged nonpayment of premium. For relief, petitioner prayed that policy be adjudged to be in force; that policy be reinstated; that the attempted reduction be declared null and void; that the premium be declared waived; for recovery of disability benefits of five hundred ($500.00) dollars per month and for return of the quarterly premium paid July 2nd, 1934.

The case was removed from State of Missouri Court in Jackson County to the United States District Court for the Western Division of the Western District of Missouri and defendant filed an answer to the petition and motion to dismiss the general nature of which was to tender the issue on all points, and the prayer asked simply for dismissal of the petition and for costs:

Trial was had to the Court and on November 23rd, 1936, the Court entered its decree dismissing the bill with prejudice. The findings of fact and conclusions of law made by the court were made a part of decree and were as follows:

> 1) That policy was issued, that contract was entered into, January 2nd, 1924. On September 26th, 1934, the plaintiff surrendered that policy voluntarily and took back the same policy, as I understand it, but with a provision that the principle amount to be paid upon his death should be $25,000.00 instead of $50,000.00 with corresponding reductions in the other indemnities provided for in policy:

2) I find the fact to be that the defendant did not in any manner or by any means conceal from the plaintiff that the $50,000.00 contract or policy of insurance did contain a provision for indemnity against total and permanent disability; ON THE CONTRARY, the defendant advised the plaintiff that it contained such a provision:

3) In connection with this declaration of law, and as a corollary thereto, the court further declares the law to be; that under the facts and circumstances of this case, an assured to whom a policy of insurance has been delivered, who has that policy in his possession; if there is nothing in the application for the policy that is inconsistent with the TERMS OF POLICY, is conclusively presumed to know the provisions of the policy; and that under the facts and circumstances of this case, the plaintiff was conclusively presumed to know that the $50,000.00 policy did contain a provision entitling the insured under certain conditions therein stated to the indemnity mentioned of $500.00 per month upon receipt of due proof that the insured was totally and permanently disabled:

The court then said—quote

4) "Perhaps it is unnecessary to go any further in this oral opinion. What I have thus far said determines the case. I think, however, that I should make one further finding of fact concerning an issue of fact that is involved in the case, although perhaps its decision, in view of what I have already said, is not absolutely necessary: If the decision of that issue of fact was decided in finding of fact number one had been otherwise, and if the law as set out in conclusion of law No. 1 had been otherwise, and if, therefore, it had been decided that the plaintiff was entitled to a reinstatement of the $50,000.00 policy, then it would have been necessary to have determined whether he was totally and permanently disabled as alleged in his bill, and whether, also, he had made proper proofs as required by the policy: Now, I do not intend to pass upon the issue of fact as to whether the plaintiff mailed the letters described in

evidence as Exhibits 3 and 4, and whether the defendant received those letters: The testimony of the plaintiff and his secretary was to the effect that the two letters were mailed, and I have no reason to doubt that they were mailed. These witnesses, one of them the plaintiff, was, of course, interested in the result of the case, but I am certain that neither he nor his secretary would swear falsely about a fact of this kind. While I do not make any decision as to that issue, I have no doubt at all that the letters were mailed as the witnesses testified that they were mailed. Whether they were received I do not know—

"He certainly is totally disabled, I would think, from carrying on the same kind of business enterprise as that upon which he was engaged and at which he was very successful. He cannot do anything of that character, but it is an incorrect interpretation of this contract to conclude that if he cannot do what he did do, therefore, he is totally disabled within the meaning of this contract, etc.".

No appeal was taken from that decree.

On December 28th, 1937, James Shay, petitioner's assignee, filed a petition on New York York Life Policy No. 8 611 895 in the Circuit Court of Jackson County, Missouri, at Kansas City: In that petition it was alleged that the policy was issued and while in force, petitioner became totally and permanently disabled; that notice of disability was given to defendant and the prayer was for the recovery of the disability benefits.

Thereupon, on March 10th, 1938, defendant filed its supplemental bill in equity in the original equity case of *Samuel R. Toucey* v. *New York Life Insurance Company*, in which supplemental bill defendant set out the pleadings and decree in such original equity suit, alleged the filing of the action at law upon the policy by the said Shay as petitioner's assignee in the Circuit Court of Jackson County, Missouri, and

for relief prayed that it be adjudged that the rights asserted by said Shay were *res adjudicata* by reason of the decree in the original equity bill suit and further prayed that the prosecution of the suit at law brought by the said Shay be enjoined.

The court issued its decree whereby petitioner and others were enjoined from prosecuting the action at law upon the policy. A writ of injunction was served on petitioner and thereafter, within due time, petitioned filed his motion to dismiss the supplemental bill in equity and motion to dissolve the preliminary injunction. Both such motion to dismiss and motion to dissolve were by the court overruled.

An appeal from the order granting defendant a preliminary writ of injunction and from the order overruling petitioner's motion to dissolve said preliminary injunction was allowed by the District Court and on February 24, 1939, the United States Circuit Court of Appeals for the Eighth Circuit affirmed the judgment of the District Court.

On March 9th, 1939, petitioner filed his motion for rehearing in the said circuit court of appeals and on March 16, 1939, petitioner's petition for rehearing was denied. On March 23, 1939, upon motion of petitioner to stay the mandate, the said court of appeals entered an order staying the issuance of the mandate for a period of thirty (30) days from and after that date.

On April 22nd, 1939, The Honorable Charles Elmore Cropley, Clerk, Supreme Court of the United States, advised appellant's attorney (Mr. Cornelius Roach, Jr.) writ of certiorari was docketed April 22nd, 1939, as number 897, October term, 1938.

On May 29th, 1939, The Honorable Charles Elmore Cropley, Clerk Supreme Court wired appellant's attorney "Petition for writ of certiorari *Toucey* v. *New York Life* denied today—advise Mr. Miller".

On June 3rd., 1939, The Honorable Charles Elmore Cropley, Clerk, Supreme Court, wired appellant's attorney "Court rendered no opinion on denial of petition for certiorari in Toucey against New York Life".

On July 22nd., 1939, the Honorable A. L. Arnold, Clerk, District Court, advised appellant's attorney "The above case has been set for trial before Judge Otis on Monday, August 14th, 1939".

On August 14th, 1939, District Court entered order for permanent injunction and court's final decree under which the Marshal was to obtain New York Life policy No. 8 611 895 and destroy policy, using physical force, if necessary.

Appeal immediately taken

Application for appeal granted.

On February 7th, 1940, the Honorable E. E. Koch, Clerk, Circuit Court of Appeals, Eighth Circuit, advised appellant's attorney that transcript of record was received from District Court and same filed and appeal docketed as number 11686.

On April 10th, 1940, defendant filed motion to affirm the decree of District Court on the ground that the opinion upon the previous appeal (temporary injunction) is binding upon the court.

On April 22nd., 1940, order entered by Judge Stone of Circuit Court of Appeals Eighth Circuit in above case denied motion of appellee for affirmance of decree and order for permanent injunction.

On June 29th, 1940, Circuit Court of Appeals Eighth Circuit entered order affirming the action of the lower court. No new opinion was written the court stating that decision on former appeal would govern. The Honorable E. E. Koch, Clerk, advised appellant's attorney under rule #18 of this Court petition for rehearing may be filed within fifteen days date of decree as entered, June 29th, 1940.

Application immediately made for rehearing.

Rehearing granted.

On July 22nd., 1940, Circuit Court of Appeals Eighth Circuit entered order in above case denying petition of appellant's for rehearing, ordering that mandate of this Court in this case to be issued to the District Court on August 2nd., 1940.

On July 26th, 1940, with no previous warning or advice, appellant received from one of his attorneys (Mr. Cornelius Roach, Jr.) the following letter (quoted) dated July 22nd., 1940, voluntarily withdrawing from any further connection with above entitled case—

> "By reason of the fact no new opinion was written by the Eighth Circuit Court of Appeals, there is no basis for an application for writ of certiorari.
>
> Because there is no basis for an application, I cannot and will not make an application. If you desire to employ other Counsel with respect to the application you are perfectly at liberty to do so. If an application is to be made an application for a stay of mandate must be made immediately." End quote:

Appellant's reply to above letter from Cornelius Roach, Jr., will be found in the certified record of case and the proceedings of the Circuit Court of Appeals, Eighth District, to be furnished the Supreme Court of the United States direct by Circuit Court on petition for writ of certiorari authorized. Appellant's reply to Attorney Roach is dated July 27th, 1940.

Appellant states that within a few days following this correspondence appellant obtained all his papers from Attorney Roach's secretary, did not discuss what, if any action appellant would take with Attorney Roach, when or how, nor has appellant met, discussed or talked with Attorney Roach since receipt of letter from Attorney Roach on July 26th, 1940, dated July 24th, 1940, and for the reasons set

out in appellant's reply to Attorney Roach dated July 27th, 1940.

Firm of Borders, Borders & Warrick (Mr. Cornelius Roach, Jr.) a junior member of same filed suit in Circuit Court of Jackson County, Missouri, December 28th, 1937, as referred to on page four, paragraph two, of this petition, that appellant had not previously to this date, since this date until as mentioned in this petition met any member of this firm of attorneys except Mr. Cornelius Roach, Jr.

That when Federal court entered order for temporary injunction (March, 1938) stopping state court jury trial in Jackson County, Missouri, Attorney Roach made the argument, that appellant was not present in Federal court due to being confined to his home as result of stomach ulcers and emergency operation for same occurring April 1st, 1933. That the arguments by counsel were oral with no record made thereof to guide appellant now to act as his own attorney in this petition for writ of certorari to the Supreme Court of the United States.

That following such order entered by Federal court in the nature of Federal court temporary injunction the firm of attorneys known as Borders, Borders & Warrick started to dissolve.

That the junior member of this firm withdrew entering the law business individually, that later Attorney Warrick withdrew leaving Attorney Borders, Jr., alone in the practice of law individually.

That due to this dissolution of the firm of Borders, Borders & Warrick and a further order to be entered by the Federal court to be later referred to and quoted by this petition in writ of certiorari, appellant will set out when and how he first met Attorney Borders, Jr., and Attorney Dupuy G. Warrick and only after the dissolution of the firm of Borders, Borders and Warrick.

Appellant here restates that appellant did not hear arguments of counsel before Federal court on temporary injunction (April, 1938) nor did appellant hear arguments of counsel before the Eighth Circuit Court of Appeals on appeal; but appellant did hear arguments of counsel before the Federal court when permanent injunction was entered by Federal court August 14th, 1939, also court's final decree ordering Marshal to destroy New York Life policy No. 8 611 895 by "law" and understood the Federal court to rule, as the Circuit Court of Appeals, Eighth District, had defined the "law", as a writ of certiorari to the Supreme Court of the United States had been rejected by the Supreme Court, there was no alternative except for the Federal court to enter permanent injunction and order for court's final decree so entered August 14th, 1939.

Appellant states also that appellant did not hear arguments by Counsel both for Federal court temporary and permanent injunctions entered as well as court's final decree carried to higher court on appeal; nor did appellant hear arguments by Counsel before Circuit Court of Appeals Eighth District on both appeals carried to this higher court on Federal court's temporary and permanent injunctions, also court's final decree, and that both arguments by Counsel were orally made in both appeals, hence appellant has no record of what was said or charged by either Counsel, one for appellant (Mr. Cornelius Roach) or for defendant, New York Life attorneys.

Making this clear to the Supreme Court of the United States in this, appellant's petition for writ of certiorari, praying the Supreme Court of the United States take jurisdiction in above entitled case, appellant proceeds with following and mention made thereof as the preliminary prelude on record of case before entering upon the record of

above entitled case as compiled and certified to by the Circuit Court of Appeals, Eighth District, to be furnished by Circuit Court direct to the Supreme Court of the United States on this petition for writ of certiorari:

Appellant's first act was to call upon attorney Dupuy G. Warrick formerly of Borders, Borders & Warrick, thus meeting to discuss with attorney Warrick the case for appellant the firm of Borders, Borders & Warrick filed in the Circuit Court of Jackson County, Missouri, December 28th, 1937, in above entitled case for the first time.

Appellant states that he did not offer the above entitled case to attorney Warrick at this time, nor did attorney Warrick indicate he desired to act as appellant's attorney; but the appellant did plainly state to attorney Warrick at this time appellant believed he would be unable to find any attorney in greater Kansas City expecting to practice law before the Federal court of Judge Merrill E. Otis who would want to take the above entitled case and represent appellant to a definite conclusion before the Supreme Court of the United States. Appellant then left the office of attorney Warrick, did not call on any other attorney following this discussion with attorney Warrick before acting as outlined in this petition for writ of certiorari or since:

On July 27th, 1940, appellant petitioned Circuit Court of Appeals Eighth Circuit acting as his own attorney praying order be entered by the Court staying the mandate to issue on August 2nd, 1940, to District Court for a period of sixty (60) days from July 22nd, 1940, and for permission to file petition for writ of certiorari to the Supreme Court of the United States so Supreme Court could review the above entitled case in its entirety.

On July 30th, 1940, the Honorable E. E. Koch, Clerk, Circuit Court of Appeals, Eighth District, acknowledged re-

ceipt of appellant's July 27th, 1940, letter as follows—quote:

> "Yesterday I received yours enclosing "Notice of appellant to stay mandate. This has been filed and it will be brought to the attention of the Court at the earliest opportunity at St. Paul, Minnesota: Attached to the above paper is—
>
> Copy of letter of Mr. Cornelius Roach addressed to you; under date of July 24th, 1940;
>
> Copy of your letter dated July 27th, 1940, to Mr. Roach;
>
> Copy of affidavit in support of petition for rehearing before the District Court of the United States for the Western District of Missouri;
>
> Letter of Judge Otis addressed to you under date of February 12, 1937;
>
> Copy of your letter to Judge Otis dated February 5th, 1937;
>
> Copy of letter to Judge Otis dated January 8th, 1937;
>
> Copy of letter of Judge Otis, addressed to you of January 11th, 1937".

On August 7th, 1940, the Honorable E. E. Koch, Clerk, Circuit Court of Appeals, Eighth District, wrote appellant court had entered order dated August 3rd, 1940, staying mandate to issue to District Court for thirty days from August 3rd, 1940, and granting petition prayed for to petition the Supreme Court of the United States for writ of certiorari, petition to be before Supreme Court within period granted in order, record and certificate by the Clerk of Supreme Court to be before Eighth District Court of Appeals within thirty day period granted, etc.

On August 9th, 1940, appellant petitioned the Supreme Court of the United States for writ of certiorari.

On August 12th, 1940, The Honorable Charles Elmore Cropley, Clerk, Supreme Court (signed E. P. Cullinan)

replied to appellant, returning petition for writ of certiorari and explained same was improperly drawn, fully instructing appellant how to properly proceed, advising immediately upon receipt of properly drawn writ, Circuit Court of Appeals Eighth District order complied with fully, case would be docketed and appellant be so advised:

On August 19th, 1940, The Honorable Charles Elmore Cropley, Clerk, Supreme Court (by E. P. Cullinan), advised appellant by letter in response to appellant's letter appellant had three calendar months from the date of judgment (July 22nd, 1940) to file petition for writ of certiorari with the Supreme Court:

On August 30th, 1940, appellant wrote The Honorable E. E. Koch, Clerk, Circuit Court of Appeals Eighth Circuit in regard to completion of record for writ of certiorari authorized to the Supreme Court of the United States and the advice received by appellant from Clerk of Supreme Court appellant had three calendar months from date of order—judgment—(July 22nd, 1940) to file writ of certiorari with the Supreme Court of the United States:

On September 3rd, 1940, The Honorable E. E. Koch, Clerk, Circuit Court of Appeals Eighth District advised appellant petition for writ of certiorari had not been filed with Supreme Court of the United States by appellant as stated by order of his Court entered September 3rd, 1940, as Circuit Court of Appeals had not been called upon to file certified record in above entitled case by September 3rd, 1940, nor had the Clerk of the Supreme Court filed certificate for writ of certiorari with clerk of Circuit Court of Appeals, hence issuance of mandate would occur to the District Court on September 3rd, 1940, but it was plain from The Honorable E. E. Koch's letter advice to appellant the Circuit Court of Appeals, Eighth District due to pressure of other work would not immediately issue mandate to District Court on September 3rd, 1940, also advising appellant it was

clerk's understanding petition for writ of certiorari, under the law, could be filed with the Supreme Court within three months from date of judgment, July 22nd, 1940.

On September 4th, 1940, appellant wrote The Honorable Charles Elmore Cropley, Clerk, Supreme Court, enclosing letter dated September 3rd, 1940, received from The Honorable E. E. Koch, Clerk, Circuit Court of Appeals Eighth District:

On September 6th, 1940, the Honorable Charles Elmore Cropley, Clerk, Supreme Court (signed H. B. Willey), advised appellant how to proceed in further petitioning Circuit Court of Appeals Eighth District:

On September 10th, 1940, appellant petitioned Circuit Court of Appeals Eighth District if mandate had not issued to District Court praying mandate be stayed; if mandate issued prayed order be entered by Court recalling mandate:

On September 17th, 1940, Circuit Court of Appeals Eighth District entered order staying mandate pending petition for writ of certiorari to the Supreme Court of the United States for a period of thirty days from and after September 17th, 1940, fully defining Court's order to comply with terms of order thus entered:

On September 22nd, 1940, appellant petitioned the Supreme Court of the United States praying for extension of time to file writ of certiorari petition and praying for an additional extension of time be granted of thirty days beyond the three calendar month time permissible by law from date of judgment (July 22nd, 1940), and stated as reasons for such additional extension of time several reasons so justifying request: One such reason was appellant had charged to the Attorney General of the United States in February, 1939, that two officers of the New York Life Kansas City Branch office had committed perjury in Federal court trial (1936) by denying possession of New York Life policy, No. 8 611 895 on June 29th, 1934: That

appellant, being advised by the District Attorney (June, 1940) appellant and witnesses could testify before the Federal grand jury shortly, checked out of hospital directly after checking in to insure one of appellant's witnesses would be subpoeaned by Federal grand jury to testify, namely, Mr. Edward G. Mura, head of the Kansas City Insurance Underwriters in 1934, and head of the New England Mutual Insurance in 1934 and at this time. That Mr. Edward G. Mura had called at appellant's office morning of June 29th, 1934 (never having been in appellant's office previously), requesting appellant to let him have New York Life policies as he desired to analyze policies to determine if said policies contained a "health" clause and, if so, advise appellant: That appellant had advised Mr. Mura an officer of the New York Life (Mr. Wells) on appellant's request had just called at office, obtained the New York Life policies and returned to his New York Life office same to analyze policies to determine if policies contained a "health" clause and to advise appellant, etc.: That while these two New York Life officers testified in Federal court (1936) appellant had Federal court subpoena Mr. Edward G. Mura to appear and testify, but, when one of the officers completed his testimony, he left court room with his attorney, called upon Mr. Edward G. Mura and requested Mr. Mura not to testify at trial as to his knowledge: That motion for rehearing made, supported by affidavit setting out these facts, Federal court denying motion for rehearing: That on appellant's request also Federal court had subpoenaed Veterans Administration's Wadsworth, Kansas, hospital to produce official hospital report on appellant dated February 1st, 1936, as their patient as evidence before Federal court trial, subpoena was served on hospital, but hospital ignored subpoena thus Mr. Mura did not testify at trial, nor did official hospital report get in record of trial: Other reasons set out also:

Mr. Edward G. Mura testified before Federal grand jury July 17th, 1940: It took appellant, therefore, from November, 1936, until July 17th, 1940, and with constant effort by appellant it took until July 17th, 1940 (*a period of over four years*), to arrange for Mr. Edward G. Mura to testify before some legal official body: That Federal court denied motion for rehearing in 1936 with full affidavit support defendant had interferred with Mr. Mura, a subpoenaed witness; that Federal court then entered temporary injunction (March, 1938) stopping State court jury trial; that same Federal court had convened Federal grand jury before which Mr. Mura did finally testify July 17th, 1940, but appellant was forced to leave a hospital in June, 1940, and work hard on District Attorney's office daily until appellant actually put Mr. Mura before a Federal grand jury to testify July 17th, 1940: The jury then went into recess on October 24th, 1940, appellant nor his other witnesses completed their appearance before jury and appellant and his other witnesses must now wait until perhaps December, if not into 1941 to appear before Federal grand jury and complete perjury charge.

On September 25th, 1940, Mr. Justice Douglas of the Supreme Court of the United States entered order extending time for filing writ of certiorari until November 21st, 1940.

On September 26th, 1940, Federal court (Judge Merrill E. Otis) enters order citing appellant for contempt of court because court's final decree had not destroyed policy No. 8 611 895. Quote:

> "To Samuel R. Toucey, and Cornelius Roach and M. W. Borders, Jr., his attorneys:
>
> "You are hereby ordered to be and appear in this court on the 30th day of September, 1940, at the hour of 9:30 A. M. and show cause, if any there be, why you have failed to perform the terms of the second paragraph of the final decree made and entered herein

on the 14th day of August, 1939, requiring that you forthwith physically surrender to the Marshal of this Court New York Life Insurance Company policy No. 8 611 895 and show cause, if any there be, why you, the said Samuel R. Toucey, should not be adjudged guilty of contempt of this Court for failure to comply with said decree." Signed Merrill E. Otis, Judge.

The appellant will resume continuation of court proceedings with the quotation of above Court order entered September 26th, 1940, and devote the intermediate pages of this petition in writ for certiorari to the Supreme Court of the United States up to *page twenty-eight* of this petition with the hope "law" will not destroy New York Life policy No. 8 611 895, *resuming on page #53 of this petition the continuation of Court proceedings thus stopped here.*

1) It is apparent appellant is not guilty of contempt of court with the order entered by Mr. Justice Douglas of the Supreme Court.

2) Appellant hopes to make it apparent to the Supreme Court of the United States in this petition for writ of certiorari New York Life policy No. 8 611 895 is required for *evidence* before the *Federal grand jury* in appellant's perjury charge against two officers of the New York Life in denying possession of policy No. 8 611 895 June 29th, 1934, in Federal court, 1936, testimony, for New York Life so called LEGAL FAILURE to comply with terms of policy No. 8 611 895 with appellant as, by this Federal court perjury, the New York Life escaped its policy obligation to appellant and CRIMINALLY thus escaped GUILT OF PERJURY for failure to comply with terms of policy No. 8 611 895: Appellant believes, in the long end, the Federal grand jury will give the answer.

3) New York Life policy No. 8 611 895 conceived in "fraud" issued in "fraud" protected by law in "fraud"

is needed by appellant (contains component part, signed medical application by appellant and medical examiner dated November 13th, 1923) to prove medical examination obtained by "fraud" to the Veterans Administration whose board of appeals by decision rendered Nov. 12th, 1937, disallowed appellant's claim as a veteran and decision quotes New York Life medical examination as one of the reasons.

In February, 1939, appellant filed with the Attorney General of the United States perjury charges against two officers of the New York Life for Federal court perjury in Federal court trial, 1936.

Charged that these two officers of the New York Life denied possession of New York Life policy No. 8 611 895 either by the New York Life or themselves on June 29th, 1934: That the New York Life New York City office also denied by deposition that they received from appellant a letter dated June 29th, 1934, on medical examination made against which policy No. 8 611 895 had been issued as well as other medical examinations, etc.

That the New York Life wrote appellant a letter dated January 9th, 1924, stating therein policy No. 8 611 895 carried te[illegible]s of Life and Accident: Also filled with other mis-statements:

That the Veterans Administration requested appellant on June 28th, 1934, to write the New York Life New York City office immediately on medical examinations; also that the Veterans Administration on June 28th, 1934, requested appellant to sign two government affidavits one of which affidavits required appellant to state thereon if the terms of New York Life policies as well as any insurance policy was just "Life"—"Life or Accident"—or "Life, Health & Accident": That appellant did not sign these two government applications on June 28th or on June 29th, 1934, but after June 29th, 1934, appellant did sign both govern-

ment affidavits and the one affidavit covering commercial insurance appellant signed stating thereon his New York Life Insurance policies carried terms of "Life & Accident". No mention made of "health".

That the records of Veterans Administration prove that the New York Life New York City office did receive appellant's letter dated June 29th, 1934, and acted upon it and also endeavored to deceive the Veterans Administration at same time:

That the records of the Veterans Administration tended to prove my perjury charge against these two officers of the New York Life by their testimony in Federal court; that appellant had witnesses who would prove this Federal court perjury and committed by these two New York Life officials to avoid legal possession of New York Life policy No. 8 611 895 on June 29th, 1934, to not only exploit the appellant legally, but to legally exploit all policy holders in State of Missouri as well as the United States:

That the Federal court had been deceived by the New York Life with its perjury; that the Federal court had been deceived by the New York Life and *rendered decision in full disagreement with Missouri established law on insurance policy disability clause;* that aside from Federal court perjury appellant would put before the Justice Department also a charge a Veterans Administration Hospital withheld knowingly and on Federal court issued and served subpoena on hospital to produce official hospital report on appellant at Federal court trial, that thus official hospital report did not get into record of trial making a beautiful legal setup so that if appellant was forced to appeal a Federal court decision in disagreement with Missouri State law would get nowhere: No hospital report to base such appeal on:

Appellant also made this charge against Veterans Administration's Hospital to Justice Department (The Honorable Frank Murphy) under date of February 16th, 1939: Ac-

knowledgment was made under date of March 16th, 1939, as follows: Quote

> "We have your communication of February 16th, 1939, requesting an investigation of Veterans Administration. This department has no authority to intervene in matters coming under the jurisdiction of any other organization of the Federal government. We regret, therefore, that we can be of no assistance to you. The file on your case forwarded with your communication is returned." Signed T. D. Quinn, Administrative Assistant to Attorney General.

Appellant states, under such a circumstance, all which could be done was to await Federal grand jury result, hope for indictments on perjury charge, then bring out at trial the full facts as to why a government hospital openly ignored a served Federal court subpoena to produce hospital report as evidence before Federal court trial;

Or, as the Federal court itself had denied motion for rehearing supported by affidavit stating New York Life Kansas City Branch office Cashier (Shellhorn) and his attorney had interferred with Federal court subpoenaed witness, Mr. Edward G. Mura, during session of trial, Mr. Mura not testifying at trial as to his knowledge; the Federal court then, when the same suit was going to trial in State of Missouri court, March, 1938, jury all but climbing into jury box to hear the complete suit, Federal court had stopped State court jury trial with Federal court temporary injunction, as the Federal court injunction had been appealed if the Federal court rendered decision of November 23rd, 1936, had not been appealed, and because Federal court by decision had disagreed with Missouri State established law on insurance policy disability clause, hospital report not in record of trial to use on appeal of November 23rd, 1936, Federal court disagreement decision, all appellant could do here was to await and hope higher court would overrule

Federal court temporary and permanent injunctions, court's final decree, all on appeal and if so bring out the ignoring of Federal court subpoena on part of hospital, also withholding official hospital report as evidence before Federal court trial, in holding State court jury trial Federal court stopped by injunction March, 1938.

Appellant plainly states in petition for writ of certiorari to the Supreme Court of the United States these facts:

New York Life policy No. 8 611 895 was and is not only necessary as evidence before the Federal judiciary.

That it would be a terrible injustice to appellant and never so intended to be the law under the Constitution if Federal judiciary decrees were to destroy New York Life policy No. 8 611 895 and claim it to be the "law", denying appellant the right of first a "fair" trial then let decision be what it may:

That New York Life policy No. 8 611 895 is needed by appellant for two other purposes aside from Federal judiciary evidence where appellant also has, to date, met with unjust consideration, namely—

1) In June, 1940, appellant requested United States District Attorney at Kansas City, (Mr. Victor K. Phelps, Acting District Attorney) to subpoena New York Life policy No. 8 611 895, take photostatic copy with all component parts, including photostatic copy of medical examination application signed by appellant and medical examiner November 13th, 1923, and put such photostatic copy before the Federal grand jury as permanent evidence to which appellant could refer when he testified fully before the Federal grand ju[illegible] on perjury charge against two officers of the New York Life committing perjury in Federal court trial of 1936 by denying possession of New York Life policy No. 8 611 895 on June 29th, 1934, and for what purpose policy

was in both the possession of the New York Life on this date and also these two New York Life officials:

That District Attorney (Mr. Phelps) advised appellant this District Attorney's office could not do as to so do would subject the District Attorney's office to citation for contempt of court due to Federal court's final decree entered August 14th, 1939, for Marshal to destroy New York Life policy No. 8 611 895.

That appellant appeared only for ten minutes before the Federal grand jury on October 24th, 1940, the jury going into recess, the time allowed insufficient to exhibit the 1923 and 1924 "fraud" New York Life policy No. 8 611 895 and component part of policy alone proves; nor could appellant leave policy No. 8 611 895 as evidence before Federal grand jury, nor did appellant leave policy No. 8 611 895 as evidence before Federal grand jury October 24th, 1940, for fear of appellant himself being cited for contempt of court if appellant photographed policy and component parts or did not have policy No. 8 611 895 and component parts in appellant's possession should the Marshal call upon appellant and again demand policy No. 8 611 895 in the name of the law to destroy same.

District Attorney has advised appellant himself and witnesses can complete testimony and evidence before Federal grand jury when jury again convenes (perhaps in December, 1940) and appellant states if New York Life policy No. 8 611 895 is not destroyed by "law" in mean time appellant will prove to Federal grand jury New York Life policy No. 8 611 895 was in the possession of New York Life and its two officials June 29th, 1934, for what purpose policy No. 8 611 895 was in such possession June 29th, 1934, on appellant's request on New York Life and demonstrate to Federal grand jury from New York Life policy No. 8 611 895

the following proof both policy and its component parts alone hold, namely—

1) New York Life signed agreement dated November 13th, 1923, confirming New York Life had analyzed all appellant's Life Insurance policies then in force and effect with other companies, advising appellant to retain certain policies in force, but to cancel off $70,000.00 straight life insurance in three policies in two different insurance companies and buy in their place New York Life—Life and Accident double indemnity policy thus making less policies to watch and pay premiums on by only having the one New York Life policy to watch and pay premiums on, etc. That if appellant would permit his medical examination by the New York Life that date (November 13th, 1923) it did not obligate appellant to buy any New York Life policy if he did not so order, etc.

2) Medical application with New York Life, signed by appellant and medical examiner November 13th, 1923, specifies the names of the two other commercial insurance companies appellant had three insurance policies in full force and effect, said three policies to be terms of "straight life": That said signed application also states terms of policy, should one be issued against such medical examination, would be Ordinary Life. Application makes no mention of a "health" coverage.

3) New York Life Kansas City Branch office wrote appellant a letter dated January 9th, 1924, (not enclosing policy No. 8 611 895) advising New York Life policy No. 8 611 895 had been issued, terms Life and Accident double indemnity, premium for 12 months of 1924 $2182.00, policy then in force and effect January 2nd, 1924, urging appellant to buy said policy, etc.

4) That appellant on January 12th, 1924, replied to New York Life's above January 9th, 1924, letter, advising that he did not order policy No. 8 611 895, it was agreed medical examination made November 13th, 1923, was not made to buy any New York Life policy; while a joint Life and Accident policy appealed to appellant, as appellant was under obligations with his other insurance to buy any additional insurance from them he was not free to buy any insurance from the New York Life or anybody; that appellant would see his other insurance upon return to Kansas City and discuss, etc.

New York Life letter dated January 9th, 1924, was mailed, addressed and received by appellant at St. Anthony Hotel, San Antonio, Texas, and appellant's reply thereto dated January 12th, 1924, also written, signed, mailed and addressed to the New York Life Kansas City Branch office from San Antonio, Texas.

5) On April 29th, 1924, appellant (back in Kansas City) bought from the New York Life its policy No. 8 611 895 and only had before appellant the New York Life letter dated January 9th, 1924, and appellant's reply dated January 12th, 1924, that policy No. 8 611 895 had never been in appellant's "possession previous to April 29th, 1924, on April 29th, 1924, appellant paid New York Life in cash a 1924 premium of $2182.00 for 12 months insurance under policy No. 8 611 895 but only received less than six months insurance under policy in 1924; that policy itself is proof policy was not in appellant's possession as New York Life Home office executed trust agreement against policy No. 8 611 895, put policy in force and effect June 4th, 1924, by pen and ink notation on back page of policy, leaving front page to state in bold type, policy "in force and effect January 2nd, 1924" terms of policy in ambiguous phraseology Life and Accident double indemnity": That the New York Life Home office, or

the New York Life Kansas City Branch office ever advised appellant of the change made in policy No. 8 611 895 as stated, never advised appellant the terms of policy were any different than as set out in New York Life Kansas City Branch office letter dated January 9th, 1924; never advised appellant New York Life put policy in force and effect June 4th, 1924, eight months following their November 13th, 1923, medical examination against all insurance underwriting rules and regulations, undoubtedly against law itself; influencing appellant to cancel one policy in full force and effect April 29th, 1924, with Kansas City Life, two policies in full force and effect on April 29th, 1924, with the Guaranty Life of Iowa Insurance Company; that appellant did so cancel these three policies to buy New York Life policy No. 8 611 895 and did so buy New York Life policy No. 8 611 895 on April 29th, 1924, thus leaving appellant's family without $70,000.00 insurance coverage in said cancelled three policies from April 29th, 1924, until June 4th, 1924, when New York Life policy went into force and effect, etc.: In addition to the foregoing a New York Life Document—a component part of policy No. 8 611 895—proves on or about May 20th, 1924, the Home Office of the New York Life changed terms of policy No. 8 611 895 and changed the policy terms different than set out in New York Life letter to appellant dated January 9th, 1924, saying nothing to appellant about this and all other "fraud" the New York Life purposely, deliberately and intentionally perpetrated upon appellant in years 1923 and 1924.

That Veterans Administration's Kansas City office requested appellant on June 28th, 1934, (ten years later) to immediately write the New York Life New York City office on medical examinations; that appellant did so write the New York Life New York City office on June 29th, 1934; that Veterans Administration's Kansas City office on June

28th, 1934, also requested appellant to sign two affidavits, but that appellant did not on June 28th, 1934, sign either of the two affidavits, nor on June 29th, 1934, but after June 29th, 1934, appellant did sign both affidavits and on the one requiring appellant state all insurance policies both "in force and not in force" and terms of each policy, appellant signed the affidavit and stated thereon New York Life policies provided terms of Life and Accident:

The Veterans Administration's Kansas City office testified at Federal court trial, 1936, with their records, corroborating all the appellant's testimony with most of the above facts stated in appellant's testimony; appellant particularly testifying that the New York Life did take action on appellant's letter to the New York Life Home office dated June 29th, 1934, which proves this Home office received such letter as the New York Life Home Office attempted to withhold from the Veterans Administration a 1932 three day New York City medical examination New York Life medical laboratory made on appellant; that this "1932 medical examination was called for by the Veterans Administration by direct request on the New York Life New York City office after appellant wrote this Home office letter dated June 29th, 1934, the New York Life home office furnishing to Veterans Administration all medical examinations made on appellant starting with the medical examination of November 13th, 1923, (comprising several in following years) but in a most subtle manner made no mention of New York Life three day medical examination in fall of 1932 made on appellant's request (not to buy insurance) did not furnish such 1932 medical examination to Veterans Administration, did not mention its existence, etc: That appellant discovered this from the records within the Veterans Administration itself, called Veterans Administration's attention thereto and Veterans Administration then called upon the New

York Life Home Office to furnish to Veterans Administration immediately their 1932 medical examination on appellant when and when only did the New York Life so furnish.

The Veterans Administration records hold more conclusive proof: Their records show that on the same date they originally wrote the New York Life home office to furnish all medical examinations made on appellant, Veterans Administration also wrote several other insurance companies who had examined appellant and sold him insurance policies, but that this other insurance refused to furnish such medical examinations to Veterans Administration on appellant stating as reason appellant had not made personal request upon them that they do so: That the Veterans Administration did not request appellant on June 28th, 1934, to write any other insurance home office other than the New York Life; that the Veterans Administration so testified from their records in the full corroboration of the appellant's testimony in Federal court; that after this other insurance made this refusal as stated, the Veterans Administration called appellant in, prepared letters on this other insurance for appellant to sign, that appellant did so sign and then and then only did this other insurance furnish to the Veterans Administration medical examinations as made on appellant: None of this other insurance undertook to withhold any of the medical examinations made on appellant either through a claimed oversight or otherwise. That is not the record of the New York Life within Veterans Administration records.

It is an outstanding, conspicuous fact from appellant's Federal court testimony the New York Life 1932 medical examination for three days, fluoroscopic, X-Ray, etc., pronounced appellant to be normal, nothing wrong yet *40 pounds* in weight, taking quantities of soda daily, etc.

A few months later emergency operation for stomach ulcer protrusion, made helpless in a Chicago hotel room,

thrown into the hands of an unethical hotel medical staff, held 15 hours for "acute indigestion", due to New York Life 1932 medical examination influencing this unethical hotel staff to make a wrong diagnosis; then this hotel surgeon operates; demands $3500.00 for the operation; withheld patient from his own surgeon in Chicago and with full knowledge; only succeeded in collecting $500.00 from appellant; and all this appellant testified to in Federal court trial.

The New York Life then use this unethical hotel surgeon as their star witness (by deposition) at Federal court trial.

Appellant intends to prove to the Federal grand jury, or on an indictment trial for perjury charged, that the New York Life paid this unethical hotel surgeon from the record of this hotel surgeon, his lawyers and his bank trying to collect $3,000.00 from appellant. It all ceased when surgeon made New York Life deposition.

6) The sixth reason why New York Life policy No. 8 611 895 should not be destroyed by "law" and prevent this document as evidence before Federal grand jury on perjury charge is:

Appellant put into possession of the District Attorney on September 1st, 1939, the same identical perjury charge and against the same identical New York Life officers (Cashier Shellhorn and his assistant, Mr. Wells) which perjury charge was put before the New York Life directorate on November 23rd, 1936, date Federal court rendered its decision and this Exhibit #23 since in possession of the District Attorney on September 1st, 1939, has not as yet been in evidence before the Federal grand jury.

On July 24th, 1934, a New York Life officer, Mr. M. M. McKinney, appeared in appellant's office: Appellant did not know him, Mr. McKinney had to identify himself to appellant, advised appellant he had been sent by Cashier Shell-

horn to confer with appellant about reducing his insurance in New York Life under policy No. 8 611 895, take the cash surrender values on other three New York Life policies: After this discussion between appellant and Mr. McKinney on July 24th, 1934, appellant requested Mr. McKinney to confirm the discussion in writing: This the New York Life by letter dated July 25th, 1934, signed by Mr. McKinney, New York Life letter dated August 10th, 1934, signed by Mr. McKinney, did and appellant's letter to the New York Life New York City office dated August 11th, 1934 (all in record), enclosing to the New York City office New York Life Branch office letters dated July 25th, 1934, and August 10th, 1934, signed by Mr. McKinney, resulted.

It does not make legal sense nor common sense to assume appellant, being an individual capable of paying the New York Life approximately $60,000.00 since 1924, starting on April 29th, 1924, ending at end of 1934, at a clip of $5,000.00 per year for 1932, $5,000.00 for 1933; $5,000.00 for 1934 who, upon receipt of a New York Life letter dated July 25th, 1934, signed M. M. McKinney, believed he had reduced New York Life policy No. 8 611 895 from $50,000.00 to $25,000.00, believed premium to be paid up in full on the $25,000.00 until January 2nd, 1935, believed that he would receive in cash not later than August 10th, 1934, $1,474.00 for the cash surrender value of three other New York Life policies, four policies in all delivered to Mr. Wells of the New York Life, Mr. Shellhorn's assistant, by appellant's secretary and in his presence June 29th, 1934, to be advised if said policies contained a "health" clause, advised by Cashier Shellhorn by telephone about three o'clock P. M., afternoon of June 29th, 1934, policies did not contain a "health" clause; but advised by the New York Life letter dated July 25th, 1934, appellant would receive a New York Life check for $1,474.00 not later than August 10th, 1934, but received from the New York Life still another letter dated August 10th, 1934,

in lieu of check, also signed by Mr. McKinney, and do nothing about trying to collect from the New York Life immediately the $1,474.00 cash needed immediately by appellant.

Appellant did call at the New York Life Branch office on August 11th, 1934, and put the McKinney letters dated July 25th, 1934, and August 10th, 1934, before Mr. McKinney personally, demanded that Mr. McKinney write the New York Life New York City office immediately, advising that the appellant demanded the $1,474.00 cash at once, etc.

As Mr. McKinney advised appellant as they had made the mistake, it would be embarrassing for them to themselves write the Home Office, but for the appellant to write the Home Office.

The appellant did so write the Home Office as thus requested, and on August 11th, 1934, and on August 14th, 1934, appellant called again at the New York Life Branch office, Mr. McKinney in person made out the check in his own handwriting for appellant to sign, appellant did so sign on August 14th, 1934, check drawn on appellant's bank, Commerce Trust, in payment of a forced premium appellant understood to be paid in advance from New York Life letter dated July 25th, 1934, signed by M. M. McKinney, covering policy No. 8 611 895 until January 2nd, 1935. The New York Life letter dated August 10th, 1934, however, changed the situation, and the last day of grace was August 14th, 1934, to pay premium appellant thus paid on policy No. 8 611 895. Appellant marked personally on check drawn thusly by Mr. McKinney "paid under protest."

On August 14th, 1934, at the same time Mr. McKinney personally made out check, as stated, for appellant to sign, appellant put into the hands of Mr. McKinney to note, the appellant's letter written and mailed to the New York Life New York City office, dated August 11th, 1934, which Mr. McKinney requested appellant to write on August 11th,

1934: Mr. McKinney noted this letter and returned it to appellant, the manifold copy. Appellant then was given positive assurance by the New York Life through Mr. McKinney the Kansas City Branch Office would handle with the New York office the confusion in appellant's status as set out in New York Life letter to appellant dated July 25th, 1934, and August 10th, 1934, with a view to reaching settlement with appellant before another premium was due on policy No. 8 611 895 after premium thus paid under protest by appellant August 14th, 1934, due to be paid on August 2nd, 1934, as last day of grace but extended by authority of New York Life letter dated August 10th, 1934.

Mr. McKinney, testifying for the New York Life following Cashier Shellhorn and his assistant, Mr. Wells, to stand in Federal court, did not deny any or all of these facts testified to by the appellant at the outset of trial. After the Shellhorn and Wells perjury, and before Mr. McKinney testified, appellant warned Mr. McKinney not to himself commit perjury, as he knew that Cashier Shellhorn did commit perjury, as Cashier Shellhorn had admitted to appellant, in Mr. McKinney's presence, on September 11th, 1935 (date appellant discovered Shellhorn and Wells wrongful advice policy No. 8 611 895 did not contain a health clause), that he (Shellhorn) in June, 1934, did receive request from appellant to send his policy expert down to appellant's office, obtain actual New York Life policies, analyze said policies and advise appellant if said policies contained a "health" clause; that he (Shellhorn) did send his Mr. Wells down to appellant's office immediately, did not have a policy expert available in his office at the time, and that Mr. Wells was not competent to analyze a policy, etc.

Due to this Cashier Shellhorn admission to appellant in Mr. McKinney's presence on September 11th, 1935, appellant later, noticing the New York Life directorate advertised to work without salary, gladly invited policy holders

to write them, that they welcomed such letters, worked to protect policy holders, etc., appellant wrote the New York Life directorate accordingly on March 21st, 1936, and received a director's personal reply dated March 31st, 1936 (eight months before Federal court trial), which directorate reply influenced appellant to believe there would be no trial on suit appellant filed in State court October, 1935, and for the reason Cashier Shellhorn had admitted to appellant in the presence of Mr. McKinney on September 11th, 1935, sufficient of the June 29th, 1934, personal contacts with Cashier Shellhorn and his assistant, Mr. Wells, to show that these two New York Life officials did not meet their policy obligation to a policy holder with the appellant.

When Mr. McKinney did not commit perjury in character of testimony he rendered in Federal court, appellant wrote the New York Life directorate on November 23rd, 1936 (date Federal court decision rendered), making perjury charge to the New York Life directorate against Cashier Shellhorn and Mr. Wells, due to their testimony rendered in Federal court, and referred the directorate to the March, 1936, interchange with appellant. Frequent interchanges occurred between the appellant and the New York Life directors in person up to May 4th, 1937 (seven months after entering perjury charge November, 1936), but on May 4th, 1937, four days after free time elapsed to appeal Federal court decision (May 1st, 1937), a secretary for a director simply wrote appellant, "The President stated the Federal court trial and decision rendered November, 1936 was fair". No mention made of perjury charge.

As appellant had conducted his correspondence with the New York Life directors personally since entering perjury charge November 23rd, 1936, appellant requested a director make an explanation to appellant in person as to what a director's secretary's letter to appellant dated May 4th, 1937, meant.

After appellant's persistent effort, on September 3rd, 1937, a New York Life director personally wrote the appellant to take the perjury charge to the courts.

Appellant refiled his suit again in Missouri State Court on December 28th, 1937, in response to this director's invitation to do so.

On March, 1938, it was met with a Federal court temporary injunction stopping State court jury trial invited to be staged by the New York Life directorate on September 3rd, 1937.

Appellant here states to the Supreme Court of the United States there is something unholy about all this:

Appellant believes any red blooded Federal grand jury or any red blooded jury presented with appellant's perjury charge against these two New York Life officials, documentary evidence, policy No. 8 611 895 and component parts as evidence, witnesses with knowledge, etc., and then put before the jury the New York Life directorate advertisements, what the directorate offer to do to protect policy holders through advertisements, then put before the jury this New York Life November 23rd, 1936, perjury charge, a New York Life director on September 3rd, 1937, inviting a court trial to determine it, such a jury would unquestionably accommodate the New York Life directorate by indictments for these two New York Life officials.

The United States District Attorney (Acting District Attorney, Mr. Victor K. Phelps) has fully co-operated with me to the end this perjury charge will be made. While true it has been before the Federal government for a long period it is likewise true 137 different insurance companies were charged with deceiving a three judge Federal court defrauding policy holders out of from ten to twelve millions of dollars. This preceded appellant's perjury charge and has occupied the attention of the Federal grand jury. However, the District Attorney's office advised appellant Mr.

Edward G. Mura testified before the Federal grand jury on July 17th, 1940, as to his knowledge on possession of New York Life policy No. 8 611 895 as set out in affidavit on motion for rehearing denied by Federal court to be among the proceedings of Circuit Court of Appeals Eighth Circuit when submitting certified record of case to Supreme Court on writ of certiorari.

As quoted on page #10 the Federal court's final decree under which Marshal is to destroy policy No. 8 611 895, and as mentioned on page #12, last paragraph, appellant thus states one reason why policy No. 8 611 895 should not be destroyed by law.

The second reason why New York Life policy No. 8 611 895 should not be destroyed by law also to be mentioned as indicated on page #12 is the following:

The Veterans Administration's Kansas City office testified at Federal court trial with records, fully corroborating appellant's testimony.

On August 2nd, 1940, when the Circuit Court of Appeals, Eighth Circuit, July 22nd, 1940, order was to send mandate to District Court August 2nd, 1940, as stated appellant took this action.

In affidavit to Veterans Administration dated August 2nd, 1940, appellant requested Veterans Administration to eliminate from all medical records on appellant (also a veteran) all New York Life medical examinations made on appellant, the first on November 13th, 1923 (photostatic copy a component part of policy No. 8 611 895), the last fall of 1932, several during intermediate years. There was ample justification for this and the evidence was before the Veterans Administration on the record of appellant.

The Board of Veterans' Appeals in decision rendered on November 12th, 1937, quotes New York Life medical examinations in support of decision disallowing appellant's claim for financial relief.

Quote below affidavit made to Veterans Administration by Dr. H. A. Baker, Medical Director for the Kansas City Life who was one of the doctors examining the appellant for their insurance November 27th, 1922, quote (dated May 29th, 1936):

> "Enclosed herewith is photostatic medical application blank on Major S. R. Toucey:
> I examined Major Toucey myself for a policy in the Kansas City Life on November 27th, 1922, at which time Major Toucey stated to me—
> "In France in war contracted some stomach trouble result of poor food, etc.—was indigestion—free from it over a year".
> Regret very much to hear this condition has returned and that Major Toucey is now permanently and totally disabled": Signed H. A. Baker, Medical Director.

Appellant states above and more appears on the two medical applications appellant signed November 27th, 1922, one with Dr. Baker and one with Dr. Ball, Dr. Ball dead before appellant filed with Veterans Administration. Dr. Ball examined appellant for stomach ulcers and so states on his application on same date, but as appellant had not been under a doctor's care within one year, no symptoms for one year, Kansas City Life sold appellant a $25,000.00 straight life policy in 1922. Today if anyone having stomach ulcers applies for insurance the Kansas City Life will go back to date of birth perhaps and doubtful if would sell such a person a policy, but in 1922 freedom for one year was sufficient.

Quote below affidavit made to Veterans Administration by Dr. E. L. Mathias, Medical Examiner for the Guaranty Life Insurance Company of Iowa, dated June 1st, 1936, quote:

> "This is to certify that on the 11th day of July, 1923, I examined Major S. R. Toucey: In my investigation

of his physical condition I developed the fact that he had been treated by Dr. George E. Richards, of Chicago, Illinois, in 1919 for gastritis. The details of his trouble were not entered into because it is not my duty to go further into the history of the case to obtain information. The Company can investigate. From what I understand about the case at this time it is very doubtful that he would have been issued standard insurance if the records of Dr. Richards had been available. Major Toucey made no effort to hide the fact he had had some stomach trouble and the declaration made to me by him, while not sworn to, is the equivalent of the same thing. Under the ordinary practice used by medical directors of life insurance companies, of which I happen to be one, it is our practice to make inquiry on stomach disorders within five years to ten years prior to examination. As this was overlooked in the underwriting department of the Guaranty Life Insurance Company no record was obtained from Dr. Richards and I understand the claim of Major Toucey depends on Dr. Richards or his records which are not now available. This is my knowledge of the facts in this case". Signed E. L. Mathias, M.D.

In 1923 appellant states the Guaranty Life of Iowa's rules and regulations went back six years for stomach disorders.

As appellant states on page thirteen of this petition, clause one, the New York Life had in their possession Kansas City Life 1922 policy, Guaranty Life of Iowa 1923 policy, both containing as their component part medical examination blanks signed by appellant personally, also medical examiners in 1922 and 1923. The New York Life, along with these 1922 and 1923 insurance policies in full force and effect (totalling $70,000.00 straight life insurance) also a 1905 Aetna straight life policy and a 1910 Aetna Health policy also in full force and effect.

On April 29th, 1924, the New York Life influenced appellant by fraud to cancel off the Kansas City Life and the

Guaranty Life of Iowa policies, advising appellant to keep the two Aetna policies as the Aetna provided a health protection in one policy. Appellant states the two Aetna policies ran in full force and effect until maturity, one in 1930 and the other in 1933 but it was the 1910 Aetna health policy to expire in 1930. The maturity on the Aetna 1905 Life in 1933 was used to pay New York Life $5,000.00 a year premium, appellant believes in 1932, borrowing against Aetna Life policy to do so.

The New York Life medical application signed by both appellant and medical examiner made on November 13th, 1923 (a component part of policy No. 8 611 895), speaks for itself. The New York Life in 1923 went back five years. Appellant had not been a patient under a doctor since under Dr. George E. Richards of Chicago spring of 1919, but the New York Life had the benefit of medical examinations made by the Kansas City Life in 1922 and Guaranty Life of Iowa in 1923. New York Life remained beautifully away from all medical examinations at Federal court 1936 trial, but the New York Life did not remain away from paying for and hiring hypothetical doctors to testify in their behalf, and did obtain the unethical hotel surgeon who operated upon the appellant for stomach ulcer protrusion April 1st, 1933, to also testify in their behalf. There is an angle on this which would not have been healthy for the New York Life had the Missouri State Court trial occurred March, 1938.

Doctor J. Frost of Chicago, Chief Surgeon for the Chicago & Eastern Illinois Railroad, Chicago Western Indiana Railroad, Chicago Belt Railroad, was doctoring the appellant and this hotel medical staff was fully aware of this. When the appellant was helpless they operated after 15 hours and did not advise Dr. Frost. Dr. Frost checked up appellant at his hotel, finding he had been taken in am-

bulance to hospital, rushed to hospital but it was too late. Operation had occurred.

Dr. Frost was a sick man when Federal trial occurred but wired appellant he would leave Chicago with a nurse in drawing room, day light train, desiring to testify morning of arrival.

Appellant wired Dr. Frost back not to come, not needed, nor did Dr. Frost make the trip from Chicago to Kansas City.

Appellant considered the official hospital report subpoeaned by Federal court more than sufficient to prevent any difficulty at trial, but somebody blocked that. See page #11 of this petition, second and third paragraphs.

Appellant states the foregoing which is only a terse history of the full record to show, had the New York Life not committed "fraud" on appellant by first obtaining their 1923 medical examination by "fraud", perhaps also committing "fraud" on their own medical examiner by not divulging to medical examiner the 1922 and 1923 medical examinations in 1922 and 1923 policies then in possession of New York Life sales force and had appellant remained with his 1922 and 1923 insurance there is little doubt this 1922 and 1923 medical examiner attitude would have in 1932 diagnosed the appellant's true condition and the April 1st, 1933 emergency operation would never have occurred.

Instead the New York Life forced upon the trade their life, health and accident policies whether the buyers wanted them or not before 1924, in 1924 until Missouri adopted its State established law on disability about 1926 when the New York Life stopped their unfair competition with other insurance, at least in Missouri for the time being, dragged their policy holders through court if one dared to file suit and in appellant's case doubly so and the whole scheme from the outset was to obtain a Federal court decision in disagreement with Missouri State established law on insurance

policy disability clause. Appellant states he was selected for the victim, that the Federal court was deceived to the end Federal court did render decision in disagreement with State established law and unnecessarily so. Appellant believes that the New York Life policy No. 8 611 895 he owned and paid for to be the same form policy, carrying the same terms of life, health and accident the New York Life used to stifle competition, force on the trade knowing other insurance its competitors could not meet any such competition and expect to meet policy obligation if such a policy holder became disabled from ill-health.

This is all a matter of proof also within the Veterans Administration's records on appellant.

Why would Mr. John Ready with the Mutual of Boston Insurance in greater Kansas City voluntarily go to the Veterans Administration and make sworn affidavit that in 1925 (within one year of date appellant bought New York Life policy No. 8 611 895 in 1924), that in 1925 he (Mr. Ready) called upon appellant at appellant's office, requested appellant to let him have New York Life Insurance policy No. 8 611 895 so that he (Mr. Ready) could analyze said policy and advise appellant if it contained a "health" clause and if so what were the full requirements of "health" clause and that appellant declined Mr. Ready's request, advising if ever appellant wanted to know anything about New York Life policy No. 8 611 895 that appellant would make his request on the New York Life? Mr. Ready did not testify at Federal court 1936 trial, I did not request Mr. Ready to testify, nor did the New York Life who knew all the particulars of this Mr. Ready 1925 call upon appellant.

This is all proof of a belief by some insurance competitive with the New York Life that the New York Life and unfairly did not meet honest insurance competition on an ethical basis and with form policy No. 8 611 895 only in later years, due to the State of Missouri adopting State

established law on insurance policy disability clause, the New York Life changed its methods.

That it did with the appellant and New York Life policy No. 8 611 895 is self-evident.

Appellant believes this other competitive insurance resent such unethical competition as practiced by the New York Life, resent insurance policy holders being dragged through the courts by the New York Life who repudiated its own policy obligation due to State established law, thus injured the insurance business generally and appellant firmly believes this, and this alone did prompt Mr. Edward G. Mura to testify before the Federal grand jury July 17th, 1940, on appellant's perjury charge and as the appellant also stated and testified as to the knowledge Mr. Edward G. Mura had in regard to possession of New York Life policy No. 8 611 895 June 29th, 1934. In addition Mr. Mura is an honest insurance executive, as is also Mr. John Ready and both can and could be counted upon to state the facts, and both never enjoyed one cent's worth of the appellant's insurance business since or before appellant started in business in Kansas City in 1919.

The colossal size and magnitude of the New York Life Insurance Company, the public prominence of its directorate (among which is to be found the Honorable Herbert Hoover and also the Honorable Alfred E. Smith) makes those in charge of the executive handling apparently believe the New York Life can still continue to exploit the people of Missouri as it did undoubtedly so exploit for more than fifty years before the adoption of Missouri State established law on disability as Missouri did so adopt its Missouri State established law on disability, I believe about 1926, to stop the exploitation of its citizens by such unethical insurance.

Then what did the great New York Life with appellant and with New York Life policy No. 8 611 895 do: it ob-

tained a Federal court decision in disagreement with State established law on disability and in Missouri and appellant here states not only to continue to exploit the citizenry of Missouri, but to continue to exploit State courts and juries as it did perhaps so exploit for fifty years or more before adoption of Missouri State established law. If not why so urgently want a change back?

Appellant states that on June 28th, 1934, when in personal contact with the Veterans Administration as set out in this petition page #18 on, appellant was only 30% disabled as a New York Life Medical Examiner, Dr. E. A. Albers, took appellant to the Veterans Administration on June 28th, 1934, and so advised the Veterans Administration: But being 30% disabled entitled the appellant to file two affidavits with Veterans Administration, and for appellant to also return to his business after a period of physical recovery and that appellant was returning to his business after July 4th, 1934, and had made such arrangement with his corporation of which he was an official both orally on June 26th, 1934, and in writing previous to this date so the record never could have been changed by appellant or anybody else.

But on July 3rd, 1934, and the Veterans Administration also holds this record, appellant unexpectedly met with a severe stomach hemorrhage: On July 3rd, 1934, the appellant lost all hope of returning to his business July 5th, 1934, and appellant so advised his corporation.

On June 28th, 1934, and also on June 29th, 1934, date New York Life policy No. 8 611 895 was put into possession by the New York Life, appellant was to return to work as best he could from his physical condition, pay the New York Life all premiums on policy No. 8 611 895 when due the same as in the past, that in June, 1934, all premiums had been paid to the New York Life in advance on policy No. 8 611 895 and three other New York Life policies totaling

$100,000.00 insurance and a yearly premium of $5,000.00 per year.

That on July 3rd, 1934, all premiums had been paid in advance on policy No. 8 611 895 and other three New York Life policies and all paid in advance for entire month of July, 1934, on policy No. 8 611 895 and other three policies.

That appellant's financial status was different after July 3rd, 1934, also the condition of his health than what it was on June 28th and June 29th, 1934: That in July, 1934, appellant could not pay the New York Life a yearly premium of $5,000.00 on policy No. 8 611 895 and other three policies when such premiums started to fall due in August, 1934.

Why did Cashier Shellhorn and Mr. Wells send Mr. McKinney to appellant's office later in July, 1934, Mr. McKinney not known to appellant? Why did Mr. Wells not return to appellant's office where Mr. Wells had called on June 29th, 1934, and left with appellant's four New York Life policies, among them policy No. 8 611 895? Why did Mr. McKinney when appellant asked why Mr. Wells had not returned the four policies by him in July, 1934, advise appellant actual policies were not needed to arrive at the cash surrender values of each policy as records on cash surrender values were kept on cards, not within the policy so policies were not needed?

Appellant testified to all these facts in Federal court trial and Mr. McKinney also testified at Federal court trial and did not deny a one of these facts as testified to by appellant.

Appellant also states that the Veterans Administration's records hold the proof that appellant suffered a stomach hemorrhage on December 6th, 1936, less than 15 days following close of Federal court trial, November 23rd, 1936, and was confined to his residence and bed for a long period.

Appellant states that on page #11 of this petition, the Honorable E. E. Koch, Clerk, Circuit Court of

Appeals, Eighth Circuit, is quoted the clerk of court's letter dated July 30th, 1940, to appellant listing documents now a part of the proceedings in this court: That appellant's letters to the Honorable Judge Merrill E. Otis in January and February, 1937, are so listed, also replies made thereto by his Honor to appellant.

That in appellant's letter dated February 5th, 1937, to the Honorable Judge appellant states in last paragraph thereof that Federal court's decision rendered November 23rd, 1936, could not be effectively appealed.

Appellant here states when writing the Honorable Judge on February 5th, 1937, appellant believed while the Federal court did issue and serve subpoena on Veterans Administration Wadsworth, Kansas, hospital to produce official hospital report dated Feby. 1st, 1936, on appellant as its patient said Federal court issued and served subpoena on said hospital carried a misspelled name for the Clinical Director on whom Federal court subpoena was to be served morning of November 18th, 1936, and that due to such misspelled name Federal court subpoena had not been served on this hospital or its Clinical Director.

When appellant was able to leave his residence following stomach hemorrhage December 6th, 1936, that appellant did leave his residence in June, 1937, and personally visited the Wadsworth, Kansas, Hospital in question and contacted hospital authorities and discovered that Federal court issued and served subpoena drawn in the name of Wadsworth Hospital, Wadsworth, Kansas, Clinical Director, C. A. Yokley, was served and personally served on the morning of November 18th, 1937, on Wadsworth Hospital, Wadsworth, Kansas, and personally on Clinical Director, Dr. C. A. Yokley.

That on June 9th, 1937, appellant made written report to General Frank T. Hines, Administrator of Veterans Affairs, Washington, D. C., demanding appellant be given

certified copy of hospital report dated February 1st, 1936, and reporting to General Hines Wadsworth, Kansas, Hospital, particularly Clinical Director C. A. Yokley, were a disgrace to the Veterans Administration for this wilful act of injuring a veteran by withholding official hospital report so badly needed as evidence before a Federal court trial in session when subpoena served and on Clinical Director, C. A. Yokley, of hospital morning of November 18th, 1936, and both the Hospital and Clinical Director, C. A. Yokley, M. D., had ignored Federal court subpoena: That General Frank T. Hines himself knew in August, 1936, the necessity by appellant to have official certified copy of hospital report in question dated February 1st, 1936, and for Federal court trial evidence.

That General Frank T. Hines instructed hospital to furnish to appellant certified copy of official hospital report, and that Wadsworth Hospital, in July, 1937, did so furnish certified copy of hospital report to appellant nine months after Federal court trial closed, November 23rd, 1936.

Appellant states that the first notation made on this official hospital report dated February 1st, 1936, and by the nurse in receiving ward under doctor's orders proves why the appellant suffered stomach hemorrhage December 6th, 1936, within 15 days following close of Federal court trial, November, 1936.

Appellant states that this Veterans Administration official hospital report by taking any one page therefrom at random is proof the Federal court had no legal right to disagree with Missouri State established law on insurance policy disability clause; and also that the Federal court never had a legal right to so disagree with or without this official hospital report before the Federal court as evidence, but that Wadsworth Hospital deliberately ignored Federal court issued and served subpoena and did not produce offi-

cial hospital report before Federal court trial as evidence and that appellant believes such hospital action not to be due to ignorance, but deliberate and because said hospital report was not desired by someone to be in record of Federal court trial and thus not available to refer to if appellant was forced to take an appeal on decision rendered. That the Federal court was deceived in the whole conduct of trial held, that appellant put proof before the Federal court appellant's Federal court subpoenaed witness had been interfered with by an officer of the New York Life during session of trial but that this proof was ignored by Federal court who denied motion for rehearing only for same Federal court to inject Federal court temporary injunction stopping State court jury trial, March, 1938.

Appellant states that Federal court's final decree entered August 14th, 1939, instructing Marshal to take from appellant, physically if necessary, New York Life policy No. 8 611 895 is strong legal language and to justify same appellant could only be considered with such order appearing within Federal judiciary records as an undesirable citizen: That appellant has made search and can find no justification for such a Federal court's final decree to be entered:

That appellant had never been in a court trial in his entire life until filing suit in equity in State of Missouri court against the New York Life on policy No. 8 611 895, October, 1935.

That this was the suit in equity tried before Federal court without jury, November 18th to 23rd, 1936.

That appellant had been a heavy buyer of insurance policies starting with the Aetna Life policy in 1905 and that for the period of 1905 to October, 1935, when suit in equity was filed against the New York Life in Missouri State court appellant had never made claim against any insurance previously to 1905, since 1905 or until October, 1935, but ap-

pellant buying insurance heavily in his railroad supply business from 1919, buying insurance heavily for himself personally and of all types personally only one insurance company ever paid appellant a claim and voluntarily so (amount not exceeding $100.00) and that insurance company to be the Aetna Insurance Company whose first policies the appellant bought in 1905.

That such a Federal court final decree as entered August 14th, 1939, was unjustified; that such a Federal court order entered September 26th, 1940, citing appellant for contempt of court because Marshal had not destroyed New York Life policy No. 8 611 895 was unjustified:

That appellant is thus forced in this his petition for writ of certiorari to the Supreme Court of the United States to state the following facts without comment and then to continue in this petition with the court proceedings to which petition refers the mention of which was interrupted by appellant starting with page #17 of this petition to put before the Supreme Court why New York Life policy No. 8 611 895 should not be destroyed by "law" and the necessity by appellant for policy No. 8 611 895 for evidence before the Federal grand jury in his perjury charge against New York Life officials in Federal court, and also for evidence before Veterans Administration to throw out from the records on appellant (also a veteran) New York Life medical examinations obtained by "fraud" a photostatic copy of one being a component part of policy No. 8 611 895 to be destroyed by "law".

The Kansas City Star, and greater Kansas City morning and evening newspaper addition, Sunday, February 7th, 1937, under large type front page caption appears, quote:

LAWYERS DON'T LIKE IT.
PRESIDENT'S COURT PROPOSAL CRITICISED WIDELY HERE.

QUOTES THE FIRM OF NEW YORK LIFE ATTORNEYS GEORGE J. MERSEREAU.

"Most revolutionary act the President has advanced so far; untimely; not in keeping with general idea of our form of government; I can't believe any thinking man would approve of it; I have talked with twenty or more lawyers and I have yet to find anyone who approves of it, lawyer or layman."

The same Kansas City Star in issue of February 12th, 1937, under largest sized front page caption, with photograph of the most Honored Citizen and Federal Judge states, quote:

"A COURT SCREEN"

JUDGE OTIS ASSERTS PRESIDENT'S MESSAGE TO CONGRESS ON FEDERAL JUDICIARY WAS "CAMOUFLAGE" NEVER SO FAR AHEAD: ATTORNEY GENERAL CUMMINGS' OWN REPORT QUOTED AS PROOF THERE IS NO JUDICIAL DELAY: ACT OF CAESAR RECALLED: ROMAN SENATE NEVER REGAINED POWERS IT TEMPORARILY GAVE AUGUSTUS, JURIST POINTS OUT.

"Federal Judge Merrill E. Otis today left the bench where strictly legal interpretations are the rule and, for the benefit of the Real Estate Board, applied himself to an interpretation of President Roosevelt's Supreme Court message. He went back to the world war to find a word for it—'camouflage'. Camouflage he said he had discovered by reference to Webster means 'The disguising of a camp, battery, arsenal, ship, etc., as by paint, screens, shrubbery or the like, to reduce its visibility or conceal its actual nature from the enemy'. Before Judge Otis finished his talk one dis-

covered he meant that under the guise of speeding up justice in federal courts, President Roosevelt had set up a plan to 'Pack the Supreme Court' and that was 'Camouflage'. What Judge Otis objected to was the premise laid for the packing. It all seemed to be based upon a letter which Attorney General Cummings sent to the President February 4th, and Judg. Otis quoted from it:

> " 'My Dear Mr. President: Delay in the administration of justice is the outstanding defect in our federal judiciary system. * * * It has exasperated the bench, the bar and the public. * * * The evil is a growing one. The business of the Courts is continually increasing. * * * The time has come when further legislation is essential'. At that point Judge Otis produced a chart he had had drawn which illustrated visually the business of the federal courts in recent years. And he bulwarked that chart with quotations from an annual report he received two weeks ago from Attorney General Cummings written, it seems, in a moment of pride over the federal judiciary; that was issued prior to the night of February 4th when Attorney General Cumming. wrote the letter to the President— 'Delay in the administration of Justice is the outstanding defect of our federal judiciary system. The evil is a growing one'. (Judge Otis then continues, but I quote one important statement and skip over some three newspaper columns of the jurist's comment). That report was no surprise to me, Judge Otis said. 'For years the legal profession has pointed to the Supreme Court of the United States as the great example for all courts to follow, as the one court of all where there was no delay, where the work was done, where every case ready for submission was disposed of before the term ended, even though six of the nine jurists, so it has been intimated, are pitiable objects of senility.' No, Judge Otis said, it cannot be what the President seeks is speedy justice because now

there is no delay. So Judge Otis looks behind the screen and shrubbery. When we have lifted them away, he said, to discover what it is whose actual nature it was sought to conceal, not indeed from the enemy, but from America, what is it that we find? I answer not in my own words, but in the words of a thousand screaming headlines published by a press that still is free: Quote the headlines: You have read the answer—'Pack the Supreme Court.'"

Article too lengthy to quote more here.

Appellant states that bank presidents have used their bank financial monthly prospectus to charge President Roosevelt "Packed the Supreme Court of the United States" in his own image; that The University Bank of greater Kansas City and personally by its President, Mr. J. R. Breed, has for months been so utilizing the bank prospectus. That appellant and Bank President J. R. Breed have been exchanging friendly letters in diametrically opposite political philosophies. That appellant has favored President Roosevelt with both such bank prospectus and letters so interchanged which have been acknowledged. That appellant also has favored Attorney General Jackson similarly and Mr. Jackson has acknowledged personally, etc.

That on October 18th, 1940, President Breed of the University Bank favored appellant with the latest issue of his bank prospectus largely devoted to President Roosevelt "Packing the Supreme Court" and that on same date appellant wrote President Breed as follows, favoring President Roosevelt with copy (acknowledged by Stephen Early) and also favoring Attorney General Jackson and acknowledged personally by Mr. Jackson.

That there was organized in Jackson County, Missouri, which embraced greater Kansas City an association known as the Employers Liability Association; that the associa-

tion members comprised the large corporate and individual employers of labor, etc. That this association was, some time back, advertised in the press with big sounding names and for big sounding public benefit:

That one of the prominent members of this association and one of its organizers was a Mr. Heath Moore, a New York Life department head in greater Kansas City:

That the time had arrived to give the Rooseve't "Packed Supreme Court" a rest in the bank prospectus perhaps if President Breed would investigate this association as its original purpose seems to have been to "Pack the jury boxes in Jackson County, Missouri, State courts also embracing greater Kansas City." That if Mr. Breed would investigate this association appellant felt quite sure he could devote his bank prospectus on the next issue to the Employers Liability Association and its purpose:

That the members of this association employed in the neighborhood collectively of over fifty thousand (50,000) employes: That it seems the sheriff of Jackson County, Missouri, would call on association members, leave a large supply of cards: That such members would fill in such cards with the names of their employment: That the sheriff would then again call and collect such filled in cards, go over to the Jackson County Court House and throw this volume of cards filled out by the association members with names of their employes into the Jackson County, Missouri, Jury Wheel: That the jury wheel of Jackson County, Missouri, listed approximately slightly over sixty thousand (60,000) names; that the approximate employment of association members was, as stated, fifty thousand employes (50,000) so thus the Jackson County Missouri, jury wheel, if all this were true, had been "packed" by association members and "packed" for a long time and was still so "packed" and there was no argument why it was so "packed" as the asso-

ciation members paid their employes their regular salaries when drawn for jury service and while serving on juries:

That appellant had learned within the last month a lawyer in Kansas City representing a client appeared before a Jackson County, Missouri, court, requested a change of venue in a civil suit, a court trial was held to submit the issue and the charge was due to the activity, as stated, by this association it was believed a "fair" jury trial was not possible in Jackson County, Missouri, courts and the client of lawyer requested a change of venue be granted and for the purpose as stated herein by appellant so that trial could occur at a point outside of Jackson County, Missouri: That the court was then considering the matter: That appellant would be glad to advise President Breed all particulars, name of lawyer, etc., to investigate and if true, put in bank statement prospectus as if true it was *Treason* against the Constitution of the United States, *Treason* against Democracy and *Treason* against the Constitution of the State of Missouri: Appellant states President Breed has not, as yet, indicated his intention: That a Kansas City Star reporter, appellant understands knew all about these facts. No mention made of it at all in Star so far as appellant can find to date.

The late greatly Honored Jurist (Justice Cardozo of the United States Supreme Court) said—quote—

> "It is the duty of a Judge to objectify in law, not the Judge's own convictions, ambitions and philosophies, but the convictions, ambitions and philosophies of the spirit of his time".

Appellant believes the first thirteen (13) States first rejected the Constitution for the reason they believed such a colossal Federal government with the one court might not render justice to the State citizen; that then followed the first ten amendment to the Constitution known as the

"bill of rights" when the thirteen (13) States adopted the Constitution:

That if for a period of over fifty years State courts of Missouri were publicly charged with "Insurance Corruption" by the power of the State citizens vote judges finally were put upon State court benches to give the answer, adoption of "State established law governing legal disputes on the disability clause of insurance policies", Missouri so adopting State established law on disability:

Appellant believes also that Federal court was deceived by defendant, influenced to render decision in disagreement with Missouri State established law on disability and that such decision could be but a "tortured" construction of the Constitution as reflected in Federal court decision rendered:

That the Federal court had personal knowledge appellant's Federal court subpoenaed witness had been interfered with by one of defendant officials during session of trial; that this subpoenaed witness did not testify at trial as to his knowledge.

That the Federal court denied motion for rehearing supported by affidavit setting out such facts so subpoenaed witness could not testify as to his knowledge and be in record of trial on which to base an appeal on decision rendered:

That Federal court had personal knowledge doctors and nurses (official hospital report on appellant dated February 1st, 1936) likewise subpoenaed by Federal court to appear, be produced as evidence before trial; that the doctors, nurses (official hospital report) did not so appear, nor was so produced before trial, nor all in record of trial to be used to base an appeal on decision rendered:

That Federal court had personal knowledge appellant would not file an appeal on decision rendered following trial without such testimony rendered in record of trial, without such evidence by both subpoenaed witnes set out

in motion for rehearing as well as such witnesses and evidence set out otherwise before the Honorable Court and Jurist:

That Federal court knowing all this entered Federal court temporary injunction (March, 1938) stopping State court jury trial, the same suit as filed in State of Missouri Court, October, 1935, refiled by appellant in same State Missouri Court December, 1937, and in a form to hold the suit to State of Missouri Court for trial so that the subpoenaed witness, the subpoenaed witnesses (official hospital report) could not appear and testify as to their knowledge and regardless of why such Federal court subpoenaed witnesses and evidence did not appear and testify at Federal court trial (November 18th to 23rd, 1936) it was always fully intended under the Constitution and all laws enacted thereunder justice should never be defeated by denying appellant first a "fair" trial, then let the decision be what it may and that the Federal court was in error in entering Federal court temporary injunction, Federal court permanent injunction and court's final decree (August 14th, 1939) and thus defeated justice by first denying motion for rehearing, then denying appellant the right to trial in his own State Court of Missouri by the injection of Federal court injunctions and court's final decree under which the Marshal was to take away from appellant, by physical force if necessary, and destroy New York Life policy No. 8 611 895.

Appellant prays the Supreme Court of the United States to take jurisdiction on appellant's writ of certiorari and go into the above entitled case fully:

Appellant now continues with his recitation of Court proceedings abruptly cut off by appellant on page #17 of this petition to pray to the Supreme Court of the United States Federal court's citation of appellant for contempt of court

entered on September 26th, 1940, due to court's final decree entered August 14th, 1939, may not result in the "law" destroying New York Life policy No. 8 611 895 and to set out the two urgent needs for policy No. 8 611 895 as evidence before two other governmental bodies to prove 1923, 1924 as well as June 29th, 1934, possession of policy No. 8 611 895 and all the "fraud" proven by said policy from 1923 to 1934 and its component parts, practiced and wilfully perpetrated upon appellant with malicious intent by defendant.

On September 30th, 1940, appellant appeared before the Honorable Court as ordered September 26th, 1940, when appellant withdrew motion and Federal court dismissed order in citation for contempt of court.

On October 3rd, 1940, appellant petitioned Circuit Court of Appeals Eighth Circuit praying for an additional extension of time from date of judgment (July 22nd, 1940) or for four months or until November 21st, 1940, to file writ of certiorari with the Supreme Court of the United States.

On October 4th, 1940, the Honorable E. E. Koch, Clerk, Eighth Circuit Court of Appeals advised appellant and quoted the law governing Circuit Court of Appeals Eighth Circuit which did not permit the Court to act upon appellant's petition, the petition by appellant being returned to appellant by the Honorable E. E. Koch, Clerk, Circuit Court of Appeals Eighth District.

On October 8th, 1940, appellant petitioned the Supreme Court of the United States quoting letter appellant received from the Honorable E. E. Koch, Clerk, Circuit Court of Appeals Eighth Circuit, dated October 4th, 1940, advising appellant's petition entered October 3rd, 1940, had been returned without court action, the law not permitting the court to act, praying for an additional extension of time as granted by Mr. Justice Douglas in order entered September 25th, 1940, granting to appellant until November 21st, 1940, to file writ of certiorari with the Supreme Court

of the United States, appellant asking and praying order be entered granting appellant a thirty (30) day additional time to file writ of certiorari beyond November 21st, 1940. Appellant stated it seemed to appellant it was a race as between the Marshal destroying New York Life policy No. 8 611 895 on order entered by Federal court August 14th, 1940, or appellant filing writ of certiorari with the Supreme Court of the United States, appellant being tied up as a witness before the Federal grand jury on appellant's perjury charge against two officers of the New York Life who denied possession of New York Life policy No. 8 611 895 in their Federal court trial testimony and that appellant required New York Life policy No. 8 611 895 for evidence before Federal grand jury, etc.

On October 10th, 1940, The Honorable Charles Elmore Cropley, Clerk, the Supreme Court of the United States (by E. P. Cullinan), advised appellant by letter application was presented to Mr. Justice Reed who declined to act upon application for a further stay as it did not appear the Circuit Court of Appeals, Eighth Circuit, had been presented appellant's petition to act upon same.

On October 18th, 1940, appellant petitioned the Supreme Court of the United States requesting certified copy of order entered by Mr. Justice Douglas be mailed direct to The Honorable E. E. Koch, Clerk, Circuit Court of Appeals, Eighth Circuit; and praying that the Supreme Court of the United States grant to appellant an additional extension of time beyond the additional time entered by Mr. Justice Douglas' order dated September 25th, 1940, granting to appellant until November 21st, 1940, to file writ of certiorari: That if a thirty day extension of time was granted by order entered by Supreme Court to forward to The Honorable E. E. Koch, Clerk, Eighth Circuit Court of Appeals direct new order entered; or if petition denied, to mail

direct to Clerk, Circuit Court of Appeals, Eighth District certified copy of order entered by Mr. Justice Douglas September 25th, 1940, granting extension of time until November 21st, 1940, to file writ of certiorari:

On October 22nd, 1940, the Honorable Charles Elmore Cropley, Clerk, the Supreme Court of the United States (by E. P. Cullinan), advised appellant by letter that certified copy of order entered by Mr. Justice Douglas September 25th, 1940, granting until November 21st, 1940, to file writ of certiorari with the Supreme Court of the United States had been forwarded to Clerk, Circuit Court of Appeals, Eighth Circuit; that it was not permitted under the law to grant a further extension of time to file writ of certiorari:

On October 25th, 1940, the Honorable E. E. Koch, Clerk, Circuit Court of Appeals, Eighth District, advised appellant order had been entered by his court granting extension of time until November 21st, 1940, to file writ of certiorari with the Supreme Court of the United States, enclosing copy of order:

On October 25th, 1940, appellant wrote The Honorable Charles Elmore Cropley, Clerk, the Supreme Court of the United States quoting letter from The Honorable E. E. Koch, Clerk, Circuit Court of Appeals, Eighth District, under date of September 18th, 1940, from which it would appear, under the law, the Supreme Court of the United States might grant an additional extension of time, for thirty days beyond November 21st, 1940, as per order entered by Mr. Justice Douglas on September 25th, 1940. Appellant set out appellant had finally appeared before the Federal grand jury for ten minutes on October 24th, 1940, that Federal court exhibits were in the possession of the District Attorney, had been mislaid, was doubtful how much more appellant would be delayed obtaining exhibits or by the Federal grand jury and doubtful when could properly

compile writ of certiorari under circumstances to the Supreme Court of the United States; in fact the Acting District Attorney (Mr. Victor K. Phelps) suggested to appellant he request the Supreme Court of the United States for an additional extension of time and appellant now states this herein.

On October 29th, 1940, the Honorable Charles Elmore Cropley, Clerk, the Supreme Court of the United States (signed E. P. Cullinan), advised appellant application for an additional extension of time to file petition for writ of certiorari was presented to Mr. Justice Douglas and the Justice denied application and quoted the Justice's entry—quote—"Denied without prejudice to renew the motion with additional affidavits as to the then condition after November 15th, 1940."

On October 30th, 1940, appellant advised the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States, that District Attorney (Acting Attorney, Mr. Victor K. Phelps) had returned to appellant Exhibit #23 and advised that Exhibit #5 would be returned to appellant, and which contains component parts of New York Life policy No. 8 611 895 Exhibits with policy before Federal court trial, while still misplaced in District Attorney's office should be returned to appellant on October 30th, 1940, so no further extension of time for appellant to file writ of certiorari with the Supreme Court of the United States beyond November 21st, 1940, seemed necessary and that appellant would file writ of certiorari with the Supreme Court on or before that date.

On November 2nd, 1940, the Honorable Charles Elmore Cropley, Clerk, the Supreme Court of the United States advised appellant (signed E. P. Cullinan) copy of order by the Circuit Court of Appeals, Eighth Circuit, staying the issuance of mandate in above entitled case had been received.

PETITION FOR WRIT OF CERTIORARI.

Appellant directs attention to *Statement, Brief* and *Argument for Appellee* appearing in the certified record in the above entitled cause. Quote:

> "The decree below should be affirmed because the issues raised on this appeal have been expressly ruled against plaintiff on his first appeal and therefore constitute the law of the case".

Appellant has a conviction that this is the *strongest argument* advanced by defendant: That any and all attempts by defendant to *cite precedent cases* justifying the federal court had legal right to enter temporary injunction stopping state jury trial (March, 1938) is conspiciously lacking.

Appellant states in the light of the fact that it has been said "A citizen cannot remain in Federal Judiciary Courts to obtain justice due to the high costs", that the so called *Strong Argument* by the defendant as quoted proves to be its *Weakest*, in fact no argument at all:

That when the *trial court* found there was *no fraud nor concealment*, there was *nothing left* (In a case in Equity) for it to *act upon* except the *claim* of *disability benefits*, and on that *cause of action* there was a *plain, adequate* and *complete remedy at law*, and the *dismissal* of the *bill in equity* was, in *law, without prejudice* to a *subsequent action in law*

That if the *opinion* of the Circuit Court of Appeals Eighth Circuit in this case is to stand *Section* 379, *U.S.C.A.*, 28, does not *mean what it says*, there is *no limitation upon the right of a federal court* to *stay proceedings* in a *state court* and that *Section of the Statutes Means Nothing, Has Been Repealed, and Is a Dead Letter.*

That the Supreme Court of the United States has thus been *overruled by lower courts;* that the first thirteen (13)

States only influenced to adopt the *Constitution* following the first *ten amendments* thereto (*bill of rights*) to guard against a *state citizen* being *denied justice* within the *federal judiciary* has *miserably failed.*

The action was *In Personam* in above entitled cause: The public charge *"Delay in the Administration of Justice was the Outstanding Defect in our Federal Judiciary System; the Evil was a Growing One"* here stands proven by federal court decision and the full concurrence therein by the Circuit Court of Appeals Eighth Circuit: That the same federal court, the same Circuit Court of Appeals Eighth Circuit (sitting as a three-judge federal court) were deceived by 137 different insurance companies with resultant exploitation of policy holders in the name of the "law" just previous to the Federal Court entering temporary injunction stopping state court jury trial in above entitled cause, and appellant in the strongest language capable of his command charges to the Supreme Court of the United States that the same two lower Courts have been again deceived and by the defendant in the above entitled cause even to the extent of influencing the federal court to enter court's final decree ordering the Marshal to destroy New York Life policy No. 8 611 895 in the name of the "law" and for a reason plainly apparent by policy and its component parts within themselves as proof. Even beyond this citing appellant by court order for contempt of court because Marshal had not so destroyed New York Life policy No. 8 611 895. A full four day trial.

1). Less than one day was consumed by federal court in Equity trial to rule "No fraud by defendant June 29th, 1934" was committed on appellant.

2). More than three days was consumed by federal court to determine if appellant was "Permanently and totally disabled for his regular line of work": Decision rendered ruled that appellant was found to be so dis-

abled; but the same decision ruled appellant "could do some other kind of work"

Appellant states such a federal court trial and decision does not make legal sense in the light of the Constitution: nor common sense.

Appellant's Reasons Relied Upon for the Allowance of the Writ.

The Circuit Court of Appeals in holding that a Court of Equity may, after determining the equitable issues adversely to the petitioner, determine legal issues, has denied justice and has decided an *important* question of federal law which holding is in *conflict* with applicable decisions *rendered by the Supreme Court of the United States with its own prior decisions:*

Dowell v. *Mitchell*, 105 U. S. 30?, 26 L. Ed. 1142.

American Falls Milling Company, v. *Standard Brokerage & Distributing Company*, 248 Fed. 487 (8th C. C.A.)

Linden Investment Co., v. *Honstain Brothers Co.*, 221 Fed. 178 (8th C. C. A.)

The Circuit Court of Appeals has held that a Federal court, notwithstanding the prohibition of Section 265, Judicial Code, Section 379, U. S. C. A., Title 28, may stay proceedings in an *action in personam* in a State court, and in so holding has decided an important question of Federal law, and such holding is in *conflict* with applicable decisions of the Supreme Court of the United States and with prior decisions of the Circuit Court of Appeals for the Eighth Circuit which latter court has so far ignored the plain meaning and intendment of that statute as to call for the Supreme Court of the United States power of supervision:

Kline v. *Burke Construction Co.*, 260 U. S. 226, 67 L. Ed. 226, 24 A. L. R. 1077;

Armour & Co. v. *Miller*, 91 F. (2d) 521 (8th C. C. A.);
W. E. Stewart Land Company v. *Arthur*, 267 Fed. 184 (8th C. C. A.);
Desha County v. *Crocker*, 72 F. (2d) 359 (8th C. C. A.).

Statement of Basis on Which the Jurisdiction of the Supreme Court of the United States is Invoked.

(a) *Statutory provision believed to sustain the jurisdiction.* The jurisdiction of the Supreme Court of the United States is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13th, 1925, Chapter 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347a), and under the same act, Chapter 229, Section 8, 43 Stat. 940 (28 U. S. C. A. 350).

(b) *The date of the judgment sought to be reviewed.* The judgment of the Circuit Court of Appeals affirming the judgment of the District Court was entered June 29th, 1940, and petitioner's petition for a rehearing was denied July 22nd, 1940. The petition for writ of certiorari and supporting certified transcript of the record (to be furnished by the Circuit Court of Appeals, Eighth Circuit, to Supreme Court of the United States) was granted an extension of time (four months from date of judgment, July 22nd, 1940), or until November 21st, 1940, by order entered by Mr. Justice Douglas of the Supreme Court of the United States, September 25th, 1940.

The Questions Presented.

ONE:

Do the provisions of Section 379, Title 28, U. S. C. A., Section 265, Judicial Code, prohibit a *Federal court* from staying proceedings in an *action in personam pending in a State court?*

Two:

Does a Court of Equity, upon determining the equitable issues adversely to the petitioner, *lose jurisdiction to adjudicate legal issues?*

1). It is clear that the original action in above entitled cause was in equity to avoid the reduction in the amount of New York Life policy No. 8 611 895, and to procure a reinstatement of that policy was an *Action in Personam.*

Whether petitioner might have had judgment in that case did not depend upon proof by him of total disability for, upon proof of fraud in the procurement of the lapse of the policy, petitioner would have been entitled to a decree of reinstatement in the original amount (or reduced amount) conditioned upon payment of premiums, regardless of disability.

In Couch, Cyc. of Ins. Law, Par. 1429, Vol. 6, it is said:

> "* * * So, it is held that for a wrongful cancellation for nonpayment of premium, the plaintiff was entitled to have the policy declared in force, but that it should also be adjudged that the premium due, with proper interest, be paid".

It is clear an action in equity draws to it all issues, equitable and legal, essential to complete adjudication of the issues between parties. As a concomitant of the rule, it is clearly established that when a *Court in Equity* determines the equitable issues adversely to the petitioner, whether for lack of proper averment or lack of proof, that *Court* loses jurisdiction to determine the legal issues.

It is clear in above entitled cause that when the Federal court ruled there was no fraud committed upon appellant by defendant as to terms of New York Life policy No. 8 611 895, in a suit in equity, there was nothing left for it to act upon but the policy clause governing disability, and

on that cause of action there was a plain, adequate, and complete remedy at law, and a Federal court should have dismissed the bill without prejudice to an action at law.

2). When petitioner entered Circuit Court of Jackson County, Missouri, December, 1937, and filed petition in suit against defendant, it was clearly an *Action in Personam* in which nothing more than a personal judgment was sought. There is and can be no objection to a subsequent action either before or after judgment, and this because the subsequent action neither ousts the jurisdiction of the Federal court in which the action was first brought, nor does it delay or obstruct the exercise of that jurisdiction, nor lead to a conflict of authority where each court acts in accordance to law and where the actions, as here, are *in personam*. It is thus clear under the Constitution and laws thereunder a judgment in one court may be pleaded in another court, and the effect of the judgment is to be determined by the application of the principles of *res adjudicata* by the court in which the action is still pending, in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law.

In the face of the foregoing questions one and two, this petition for writ of certiorari quotes the first written opinion handed down by Federal court to justify entering temporary injunction stopping State court jury trial (March, 1938), permanent injunction, and court's final decree (August 14th, 1939), and in the name of the Constitution and laws thereunder, viz:

Memorandum Opinion on Motion to Dissolve Temporary Injunction by District Court, Judge Otis.

> "While I said at the argument of this motion that if I reached the conclusion that the motion should not be sustained no opinion would be written, yet I think I should briefly indicate the reason which leads me to

adhere to my original conclusion, notwithstanding the very able argument offered by *amicus curiae*.

I am convinced that the restraining order rightly was issued. I consider that the principle of law justifying it is that repeatedly stated by the Supreme Court. Thus, in Root *v.* Woolworth, 150 U. S. 401, 411, it was said:

> "The jurisdiction of Courts of equity to * * * effectuate their own decrees by injunctions * * * in order to avoid the relitigation of questions once settled between the same parties, is well settled."

Nothing in this declaration of principle limits it to matters *in rem* as distinguished from those *in personam*.

The same principle of law was declared by the Eighth Circuit Court of Appeals in Guardian Trust Company *v.* Kansas City Southern Railway Company, 146 Fed. 337, 340. In the opinion in that case Judge Sanborn pointed out that the principle did not justify the issuance of an injunction against the prosecution of a case in a state court if the state court case *neither* involved a claim to or lien upon specific property in the possession or under the dominion of the federal court *nor* an issue of which the federal court had acquired exclusive jurisdiction. In the particular case the issue involved in the state court was not at all adjudged in the federal court case in which the injunctive remedy was sought.

The case of Kline *v.* Burke Construction Co., 260 U. S. 226, cited by Counsel, does not appear to me to be at all in point. It was not a case which involved the jurisdiction of a federal court to protect its decree in an equity proceeding. It was a case in which it was sought to protect the jurisdiction of the federal court in a law case by preventing the trial (not of the same case, but of another case) in a state court, of which the state court had jurisdiction. The Court of Appeals for the Fourth Circuit, in an opinion written by Judge Parker (Brown *v.* Pacific Mut. Life Ins. Co., 62 Fed. (2d) 711, 713) expressly ruled that the doctrine of Kline

> *v.* Burke Construction Co. had 'nothing in it which limits to action *in rem* the rights of a federal court of equity to protect against encroachment on its jurisdiction or the lawful effect of its orders and decrees * * *. The motion to dismiss the injunction is overruled. It is so ordered." Signed, Judge Otis, District Judge:

It surely is the right of appellant and from the record to point to the fact Federal court received above entitled case first by transfer in suit in equity filed in State court (October, 1935), tried suit in equity in Federal court and rendered Federal court decision (November 23rd, 1936), and in the issues *in equity* decreed that defendant had committed *no fraud* on appellant on June 29th, 1934, by deceiving appellant as to the true terms of New York Life policy No. 8 611 895. That the suit in equity thus tried by Federal court was an action *in personam;* that same suit filed in State court December, 1937, was an action *in personam.* That by the same decision rendered by Federal court November 23rd, 1936, Federal court ruled on disability of appellant and under the disability clause in New York Life policy No. 8 611 895 and by such decision disagreed with State established law on disability in Missouri State courts.

That the above quoted initial opinion by the Federal court in above entitled cause makes no reference or citation to a single one precedent case justifying Federal court to enter temporary injunction stopping State court jury trial (March, 1938) and also that there has not been a clear cut precedent case cited in any and all opinions since written by the Federal court in the long years of litigation as a result of Federal court entering this temporary injunction stopping State court jury trial (March, 1938) nor that in the numerous briefs, petitions, etc., injected by defendant in such litigation, either before the Federal court or before

the Circuit Court of Appeals, Eighth District, does there appear a single one precedent case cited to justify the Federal court entered injunctions and court's final decree (August 14th, 1939) while the petitions, briefs, arguments, etc., by appellant's counsel clearly quotes, mentions and points to precedent cases thus cited which clearly show the Federal court was not justified under the Constitution and any and all laws ever devised thereunder to enter injunction stopping the State court jury trial with the action *In Personam.*

Furthermore as the Constitution of the United States is thus under such legal discussion and before the Federal Judicial body itself whose laws must state "What the Constitution intends" as the first thirteen States (13) first rejected the Constitution, and only adopted the Constitution following the first ten (10) amendments thereto known as the "Bill of Rights" appellant most emphatically states at no time, no place and nowhere since the dawn of American Democracy has a Federal court "Had a right to disagree with State Established law governing the insurance policy disability clause on disability" yet the Federal court writing the opinion above quoted did so disagree with State law, then in an action clearly *In Personam* entered Federal court injunction stopping State court jury trial and without quoting one single law ever written under the Constitution of the United States simply because there was and is no such law under the Constitution; and if there had so been Federal court surely would have so quoted in its opinion above quoted or subsequent opinions entered.

On page #4 of this petition, clause four, excerpt of Federal court November 23rd, 1936, rendered decision is quoted in reference to two letters written and mailed by appellant to defendant, addressed to the New York Life Home Office, New York City. One such letter as mentioned in record

dated June 29th, 1934, is now quoted in full, viz. (quoted from manifold carbon):

S. R. Toucey,

715 Midland Building.

Kansas City, Mo., June 29th, 1934.

New York Life Insurance Company,
New York City, N. Y.

Gentlemen:

The Veterans Administration of this City, or the government's War Department at Washington, will make request on you sooner or later for a full record of my examinations by you and which I purchased, as a result, all of which are now in force with premiums all paid. I think my first policy in the New York Life was taken out in 1922 and the last in 1928.

I am making request either on the Veterans Administration here or the Government at Washington shortly to be placed on the Retired Officers Emergency List. To qualify for this list one must be totally and physically disabled and I have been totally and physically disabled since my stomach operation for ulcers on April 1st, 1933. My examination a few days ago now develops I have a stomach hernia and will need another operation. I have discussed my case with Dr. E. A. Albers in Kansas City, one of your Medical Examiners, and he took me out and introduced me to the Veterans Bureau here. They advised me to write you at once if I intended to file application so that you would promptly give them my record when called for.

I presented myself to the New York Life medical department when a guest at the New Waldorf-Astoria Hotel in New York City, I think in November, 1932, advising that I had one hundred thousand dollars in New York Life Insurance, all in force with all premiums paid, and I wanted them to give me one of their most thorough examinations and, perhaps, more insurance. It took three, possibly four days to examine me

when I was advised I could have more insurance and to stop at the sales office down stairs on the way out. I advised if I wanted more I would ask for it at Kansas City upon my return. I have a faint recollection your New York office examined me some years previously when I was in New York City for some of my insurance now in force. I did not take out any more insurance, or ask for it on your 1932 examination.

I can't understand why my stomach would blow out or rupture in just a few months after this 1932 examination, particularly so as I was found in a most satisfactory physical examination condition. I do know it made me feel very good.

Please furnish the government with a record of my examinations when they call for them, and oblige:

(Signed) S. R. Toucey.

The record in above entitled cause mentions New York Life letters to appellant dated July 25th, 1934, August 10th, 1934, and appellant's further letter to the New York Life New York City office dated August 11th, 1934. All now quoted below:

New York Life Insurance Company.

Kansas City Branch Office.

Kansas City, Mo., July 25th, 1934.

Mr. Samuel R. Toucey,
714 Midland Building,
Kansas City, Mo.

Dear Mr. Toucey:

In accordance with our conversation I am giving you figures to discontinue $75,000 of your present insurance and continue $25,000 with disability and Double Indemnity Benefits.

To carry out this purpose it will be necessary that policy 8 611 895 which policy contains Disability and Double Indemnity be reduced to $25,000. The allowance due you on account of the $25,000 discontinued

will be sufficient to net you $329 in cash at this time after paying premiums in full on the policy to January 2nd, 1935. To make this change it will be necessary that the enclosed form 2274 be signed by you, your signature witnessed by some disinterested party and the request returned along with Policy Contract. It will not be necessary that your wife sign the form as I suggested during our conversation.

Policy 10 226 440 if surrendered at this time will net $717.31. The enclosed form of cash surrender value should be signed by you and dated and returned along with the Policy Contract.

Policy 10 391 096 is also to be surrendered at this time. The net cash value available under this policy will be $428.15 and you must sign the enclosed request for cash surrender value, date it and return it along with this Policy. These three policies will net you $1474.00 in cash at this time.

Policy 10 553 974 may then be surrendered on the next anniversary date, February 14, 1935, for a net cash value of $103.78.

If you decide to handle the entire matter in this manner you will have $25,000 of insurance in force charged with a loan of $8,000 leaving you net insurance of $17,000. There will be no more premiums due until January 2nd, 1935, at which time the premium will fall due on the $25,000 policy with the disability and Double Indemnity Benefits, and at that time you will have an annual dividend on that contract together with the cash value of $103.78 from policy 10 553 974, both of which amounts can be used to apply on the premium due at that time. The quarterly premium at that time on the policy continued will amount to $289.25.

We also find that there is not sufficient loan value in these policies to enable you to carry all of them without a cash payment to the first of the year.

Yours very truly,

L. C. SHELLHORN,
Cashier,
By M. M. MCKENNY.

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In lieu of the $1474.00 cash appellant was due to receive on August 10th, 1934, under terms of above quoted letter, appellant received still another New York Life letter dated August 10th, 1934, here quoted:

NEW YORK LIFE INSURANCE COMPANY.

KANSAS CITY BRANCH OFFICE.

Kansas City, Mo., August 10th, 1934.

Mr. Samuel R. Toucey,
715 Midland Building,
13th & Baltimore Ave.,
Kansas City, Mo.

DEAR MR. TOUCEY:

We are enclosing new trust agreement under policy No. 8 611 895 together with revocation of the existing trust. The Home Office has informed us that it will be necessary that you execute these new trust agreements before they can send us the changed policy.

During your telephone conversation with Mr. Wells and in my letter of July 25th we informed you that the allowance due you on account of the change under the $50,000 policy number 8 611 895 to $25,000 would be sufficient to pay the premium in full to January 2nd, 1935.

The Home Office has informed us that our figures on this matter are incorrect and that a cash payment of $231.06 will be necessary to complete the change and pay only the July quarterly premium on the $25,000 basis.

I am enclosing Mr. Wells figures on this policy and will ask that you note particularly that item which is "red lined". Instead of adding the premium on the changed basis to the outstanding loan, he through error deducted the premium from the outstanding loan, which means we over-quoted the value on this policy to you approximately $600.00. We are very sorry for this error on the part of our office and find that on checking

the matter over carefully that the Home Office is correct and that a cash payment of $231.06 is necessary to complete the premium on this policy. The Home Office has given us five days in which to collect this amount and it will be necessary that you send us a remittance of $231.06 along with the enclosed trust and revocation of the existing trust on or before August 15th.

We have not as yet received a cash value check for $428.15 on policy 10 391 096 from the Home Office, but just as soon as it is received it will be forwarded to you.

The cash surrender value on policy 10 533 974 will then be available on February 14, 1935, and will amount to $103.78.

Yours very truly,

L. C. SHELLHORN,
Cashier,
By M. M. McKENNY.

Appellant calls attention here to the record in above entitled case wherein defendant claims

> "On August 7, 1934, the sum of Seven Hundred Seventeen Dollars and thirty-one cents (717.31) being the full cash surrender value of policy No. 10226440, and the sum of Four Hundred Thirty Five Dollars and eleven cents (435.11) being the full cash surrender value of policy No. 10391096, and that appellant therefore accepted said sums as and for cash surrender values, etc."

The New York Life letter to appellant dated August 10th, 1934 (received by appellant on August 11th, 1934), signed by M. M. McKinny definitely states no cash surrender policy payments had as yet been made to appellant on that date, nor had any such cash surrender policy payments been made to appellant by the New York Life before or on August 11th, 1934, yet appellant was given until August 15th, 1934, to pay a premium on policy No. 8 611 895 said by New York Life letter dated July 25th, 1934, quoted above (also signed

by M. M. McKinney), *premiums* on New York Life policy *No. 8 611 895* were to be paid up in full *until January 2nd, 1935*, if appellant agreed to reduction in policy No. 8 611 895 and surrendered three other policies for cash value, receiving a check in cash for $1474.00.

The appellant here states the record in the above entitled case is contradictory, a poor record for appellant to be confined to show cause why the Federal court had no legal right to enter temporary and permanent injunctions, court's final decree to destroy policy No. 8 611 895, stopping State court jury trial (March, 1938) but does quote letters referred to and mentioned by Federal court decision as well as mentioned in record of case. And here quotes a letter written, mailed and addressed to the New York Life New York City Office (Home Office) on August 11th, 1934, and so written on request of Mr. M. M. McKenny made personally on appellant who explained to appellant that he (McKenny) would be embarrassed to write such a letter from the New York Life Kansas City Branch office as they (The New York Life Kansas City Branch Office) made the mistake on premium payments on policy No. 8 611 895. Nor did Mr. M. M. McKenny deny this in his testimony in Federal court trial. Quote—Likewise in record of above case:

S. R. Toucey.

715 Midland Building.

Kansas City, Mo., August 11th, 1934.

New York Life Insurance Company,
New York City, N. Y.

GENTLEMEN:

For convenience am enclosing copies of letters addressed to me by your Kansas City Branch Office dated July 25th and August 10. I have just returned from a discussion with them.

I telephoned this office the last few days of June to send down one of their representatives to my office, please, competent to analyze and compare my four policies carrying one hundred thousand dollars insurance protection. I wanted to know all about the coverage and cost, credits in them now. Two of their office representatives have called on me as a result of this request at different times, not once but a few times each. I have given them the four policies and they have examined into them. Mr. Holland, who sold me the policies is dead.

After carrying on all these discussions, I requested they write me in confirmation. Hence their ' tter July 25th.

I was operated upon in April, 1933, for stomach ulcers and four months previously the New York Life examined me for insurance and said I was all right previously. I did not take the insurance as I had sufficient. Now I spend an entire month trying to find out just what my policies are good for and, wrong again.

I do not think the Kansas City office is entirely familiar with analyzing their own policies. I advised them at the outset of all these discussions what I was up against and why I needed their best brains to advise me.

Won't you have someone in your New York office analyze my four policies for coverage, cost I have paid in past and for future if kept in force and, credits now in them. I discussed with a young lady in the office here several months ago about changing all these policies to some other basis more favorable to me in view of the loans against them now, but she advised very positively not to do so.

I am totally and physically disabled. I have plenty of work but can't work. My source of revenue has ceased and, if my insurance cancels I can't take out more in my present state. Find a way, please, to keep my insurance in force to January 2nd, 1935, and also have all my four policies analyzed closely as, I do not

think this matter has been thoroughly handled at this end.

Yours truly,

(Signed) S. R. Toucey.

Note: The New York Life letter to appellant signed M. M. McKinny, dated July 25th, 1934, originated my above letter to home office, started a live file with numerous interchanged letters on both sides which did not end until September, 1935, when I discovered the "fraud" committed on me June 29th, 1934. New York Life last letter to me dated September 6th, 1935, in this file. All my effort with view to have premiums paid by the New York Life until January 2nd, 1935, as New York Life so agreed, July 25th, 1934.

* * * * * * *

On June 29th, 1934, on my request the New York Life Kansas City Branch office's cashier (Shellhorn) and his assistant (Wells) advised me terms of policy No. 8 611 895 was "Life and Accident". New York Life letter to appellant dated January 9th, 1924, stated policy No. 8 611 895 term to be life and accident. This letter, a component part of policy No. 8 611 895 admitted to evidence with policy at trial. On page #4 of this petition, clause #3 quotes Federal court decision "*If there is nothing in application for policy that is inconsistent with the Terms of Policy, one is presumed to know provisions of policy, etc.*"

The signed medical examination application, November 13th, 1923, states policy to be issued in Ordinary Life; the New York Life letter to appellant dated January 9th, 1924, states policy terms to be "Life & Accident double indemnity"; policy No. 8 611 895 itself carries terms of Life, Health & Accident, double indemnity. See page 2 of this brief for policy No. 8 611 895. Appellant did know terms of policy No. 8 611 895 to be Life & Accident and so testified. One buys insurance on confidence, pays premiums on confidence and in confidence requests his insurance for

advice on his insurance policies, and this is what I did do June 29th, 1934.

Federal court decision in error: It ignored facts contained in policy No. 8 611 895 and component parts, also testimony thereon.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Eighth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said United States Circuit Court of Appeals for Eighth Circuit in the case entitled *Samuel R. Toucey, Appellant, v. New York Life Insurance Company, a Corporation, Appellee,* docket No. 11228, in Equity, to the end that this cause may be reviewed and determined by this Court; that the judgment herein of the United States Circuit Court of Appeals Eighth Circuit be reversed by this court; and that the petitioner be granted such other and further relief in the premises as to the Court may seem appropriate and proper.

SAMUEL R. TOUCEY,
Petitioner.

#131 West 61st, Street Terrace,
Kansas City, Missouri.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions in the Court Below.

The opinion of the District Court appears in full in the record.

The opinion of the Circuit Court of Appeals appears in full in the record.

II.

Statement of Basis on Which the Jurisdiction of This Court is Invoked.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938 (28 U. S. C. A. 347a), and under same Act, Chapter 229, Section 8, 43 Stat. 940 (28 U. S. C. A. 350).

III.

Statement of the Case.

Petitioner has stated the case in the "Summary Statement of the matter involved" in foregoing petition for writ of certiorari which is hereby adopted and made a part of this brief.

IV.

Specification of Errors Intended to be Urged.

1). The Circuit Court of Appeals erred in affirming the judgment of the District Court in favor of respondent.

2). The Circuit Court of Appeals erred in not holding that by reason of the prohibition contained in Section 379, U. S. C. A., Title 28, Section 365, Judicial Code, a Federal

court may not stay proceedings *in personam* pending in a State court.

3). The Circuit Court of Appeals erred in *not holding* that after a *Court In Equity* has decided the equitable issues adversely to the petitioner, *such Court has lost jurisdiction to try and determine legal issues.*

ARGUMENT.

Summary of Argument.

POINT A.

BY THE PROVISIONS OF SECTION 379, U. S. C. A., TITLE 28, SECTION 265, JUDICIAL CODE, A FEDERAL COURT MAY NOT STAY PROCEEDINGS IN A STATE COURT WHERE THOSE PROCEEDINGS ARE *In Personam.*

POINT B.

THE COURT, HAVING DETERMINED THE EQUITABLE ISSUES IN THE ORIGINAL EQUITY PROCEEDINGS ADVERSELY TO PETITIONER, *Lost Jurisdiction* TO DETERMINE THE LEGAL ISSUE OF *Disability.*

Point A.

By the Provisions of Section 379, U. S. C. A., Title 28, Section 265, Judicial Code, A Federal Court may not stay proceedings in a State Court where those proceedings are in personam.

It is clear that the original action in equity to avoid the reduction in amount of the policy and to procure a reinstatement of that policy was an action *In Personam.*

It is clear that the action at law in the State court brought by petitioner's assignee upon the policy to recover disability benefits was also an action *In Personam.*

Petitioner concedes that, by judicial interpretation, it is well established that in spite of the provisions of section

379, U. S. C. A., Title 28, a Federal court which first acquires jurisdiction of a *res* may enjoin subsequent proceedings in a State court involving the *same res.*

That rule, however, is limited to actions which involve *res.* Where an action, *As Here, Is In Personam,* in which nothing more than a personal judgment is sought, there is and can be no objection to a subsequent action either before or after judgment, and this because the subsequent action neither "ousts" the jurisdiction of the court in which the action was first brought nor does it delay or obstruct the exercise of that jurisdiction nor lead to a conflict of authority where each court acts in accordance to law and where the actions, *As Here,* are *In Personam.*

A judgment rendered in one court, or in one of the courts, may be pleaded in another and the effect of the judgment is to be determined by the application of the principles of *res adjudicata* by the court in which the action is still pending, in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law.

In *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 67 L. Ed. 226, 24 A. L. R. 1077, this Court said:

> "It is settled that where a federal court has first acquired jurisdiction of the subject matter of a cause, it may enjoin the parties from proceeding in a *state court* of concurrent jurisdiction whe e the effect of the action would be to defeat or impair the jurisdiction of the federal court: Where the action is in *rem,* the effect is to draw to the federal court the possession or control, actual or potential, of the *res,* and the exercise by the *state court* of jurisdiction over the same *res* necessarily impairs, and may defeat, the jurisdiction of the federal court, already attached"
>
> • • • • • • •
>
> "But a controversy is not a thing, and a controversy over a mere question of personal liability does *not* involve the *possession* or *control* of a *thing,* and an action

brought to enforce such a liability does not tend to impair or defeat the jurisdiction of the court in which a prior action for the same cause is pending. Each Court is free to proceed in its own way and in its own time, without reference to the proceedings in the other Court. Whenever a judgment is rendered in one of the Courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of *res judicata* by the Court in which the action is still pending in the orderly exercise of its jurisdiction, as it would determine any other question of fact or law arising in the progress of the case. The rule, therefore, has become generally established that where the action first brought is *In Personam* and seeks only a personal judgment, another action for the same cause in another jurisdiction is not precluded".

The Foregoing Decision Has Been Repeatedly followed by the Circuit Court of Appeals for the Eighth Circuit.

For this reason appellant quoted on page #63 of this petition for writ of certiorari the *Memorandum of Opinion on Motion to Dissolve Temporary Injunction by District Court* and calls the Honorable Supreme Court of the United States attention to fact Federal court failed to point to a single precedent case to cite in the place of the above quoted decision:

In Armour & Company v. *Miller*, 91 F. (2d) 521, the Eighth Circuit Court of Appeals said (l. c. 525):

> The Baldwin Case, supra, makes it fairly clear that if this were a bankruptcy matter, or even a case wherein a *res* was in *custodia legis* and jurisdiction over it had, as to the federal court, been, as against the state court, antecedently acquired, injunction would lie against the plaintiffs in the state court cases to enjoin further prosecution of their several actions. But here there is no *custodia legis;* the latter court merely has jurisdiction of a controversy, namely, an action for an injunc-

tion. Such an action argues no lien, and comprehends no *res* which may be affected by action in a state court. An injunction suit is an action *In Personam* and operates against persons and not property. 14 R. C. L. 307. The several actions now pending in the state court are being prosecuted by the 16 persons herein sought to be retained in the Court of respondent are actions also *In Personam*, namely, suits at law for damages to be paid in money. The great weight of authority warrants the view that it is the duty of a federal district court to retain jurisdiction of and to decide a case pending before it, notwithstanding the pendency of an action *In Personam* in a state court which involves the same subject matter: Boynton *v.* Moffat Tunnel Imp. Dist., (C. C. A.) 57 F. (2d) 772, 778; Krauss Bros. Lumber Co. *v.* Louis Bosert & Sons, (C. C. A.) 62 F. (2d) 1004, 1006; *Jensen* v. *New York Life Ins. Company*, (C. C. A.) 59 F. (2d) 957; Rogers *v.* Paving, Dist., (C. C. A.) 59 F. (2d) 555, 558; McClellan *v.* Carland; *Kline v. Burke Construction Company*, 260 U. S. 226, 43 S. Ct. 79, 82, 67 L. Ed. 226, 24 A. L. R. 1077.

"In such a situation the case of *Kline & Burke Construction Company*, supra, as we read it, holds that an action to enjoin further prosecution by the plaintiffs in the state court cases would not lie in favor of Armour & Company because there was no custody of property in the federal court to be protected by the injunctive process. See Stewart Land Company *v.* Arthur, (C. C. A.) 267 Fed. 184. In the case of *Kline & Burke Construction Company*, supra, the Supreme Court quoted with seeming approval what was said in Baltimore & Ohio R. Company *v.* Wabash R. Co., (C. C. A.) 119 Fed. 678, 680, thus:

To the same effect are the following cases:

W. E. Stewart *v.* Arthur, 267 Fed. 184 (8th Circuit Court of Appeals);

Desha County *v.* Crocker, 72 F. (2d) 359 (8th Circuit Court of Appeals).

If the opinion of the Eighth Circuit Court of Apeals in above entitled cause is to stand Section 379, U. S. C. A. Title 28 does not mean what it says, there is no limitation upon the right of a Federal court to stay proceedings in a State court and that section of the statutes means nothing, has been repealed, and is a dead letter. Also the Constitution so far as a State citizen obtaining justice against his Goliath Insurance Corporation.

Point B.

The Court, having determined the equitable issues in the original equity proceedings adversely to petitioner, lost jurisdiction to determine the legal issues of disability.

* * * * * * *

The original petition in equity counted upon FRAUD (Committed June 29th, 1934) in the procurement of the reduction in amount of, and lapse of policy: A complete stranger to appellant was used by defendant in late July, 1934 (their Mr. M. M. McKinney—see letter July 25th, 1934, page #68) to obtain reduction in policy No. 8 611 895 and cash surrender values on three additional policies. Whether appellant might have had a judgment in that case did not depend upon *proof* by him of *total disability* for, upon proof of FRAUD in the procurement of the lapse of the policy, petitioner would have been entitled to a decree of reinstatement in the original amount (or reduced amount) conditioned upon payment of premiums, regardless of *disability*.

In Couch, Cyc. of Ins. Laws, Par. 1429, Vol. 6, it is said:

> "* * * So, it is held that for a wrongful cancellation for nonpayment of premium, the plaintiff was entitled to have the policy declared in force, but that it should also be adjudged that the premiums due, with proper interest, be paid".

To the same effect are Meyer *v.* Knickerbocker Life Ins. Company, 73 N. W. 516; *Whitebread v. New York*

Life Insurance Company, 102 N. W. 143; *New York Life Insurance Company, v. Eggleston et al.*, 96 U. S. 572, 24 L. Ed. 841; Mutual Reserve *v.* Ferrenbach, 144 Fed. 342 (8th C. C. A.).

An action in equity draws to it all issues, equitable and legal, essential to complete adjudication of the issues between parties. As a concomitant of the rule, it is clearly established that when a Court in Equity determines the equitable issues adversely to the petitioner, whether for lack of proper averment or lack of proof, that court loses jurisdiction to determine the legal issues.

Your petitioner believed in starting this ARGUMENT on page #77 of this petition for writ of certiorari, in coming to the conclusion, while contained in the record, the following opinion rendered by the Federal court when entering temporary injunction stopping State court jury trial (March, 1938) said:

It is in order to state in petition at outset "Fact No. 1" as mentioned in opinion to be quoted in decision rendered said:

> "Finding of fact No. 1: I find the fact to be that the defendant did not in any manner or by any means conceal from the plaintiff that the $50,000 contract or policy of insurance did contain a provision for indemnity against total and permanent disability; *On the Contrary*, the defendant advised the plaintiff that it contained such a provision."

The defendant denies in the record itself that it did advise appellant that policy contained such a provision. That defendant has always so denied is self-evident. Hence, the Federal court decision here was in error.

Fact No. 2 as mentioned in opinion, quote from Federal court decision:

> "Fact No. 2. He certainly is totally disabled, I would think, from carrying on the same kind of business en-

terprise as that upon which he was engaged and at which he was very successful. He cannot do that or anything of that character; but it is an incorrect interpretation of this contract to conclude that if he cannot do what he did do therefore, he is totally disabled within the meaning of this contract, etc."

* * * * * * *

MEMORANDUM ON APPLICATION FOR TEMPORARY INJUNCTION.

(Entered by Federal Court.)

"We shall not write an elaborate opinion on the application for a temporary injunction but only enough to make it clear to counsel that we have not ruled arbitrarily the questions involved.

1. The decision in the trial of this case (see finding of fact No. 2) that Samuel R. Toucey was not and never had been totally and permanently disabled is *res adjudicata* of the issue. It was in issue in the case, made so by the pleading. It was the plaintiff who submitted that issue and who asked that it be decided. He was not required to do that but he had the right to do that. We had the right to decide the issues the parties submitted and to bottom the decree upon the decisions of all issues of fact. We did that.

Had there been an appeal the Circuit Court of Appeals would have heard the case *de novo*. It might well have disagreed with our *finding of Fact No.* 1 and nevertheless affirmed the decree because of *finding of Fact No.* 2. Certainly the decision of an issue which might be the sole basis for affirmance of a decree is a decision arising to the dignity of *res adjudicata*.

2. If Samuel R. Toucey himself were to have brought the suit which James Shay has brought in the Circuit Court of Jackson County, the prosecution of which the supplemental bill here seeks to have enjoined, unquestionably injunction would be a proper remedy to prevent the prosecution of that case. Fiske *et al. v.* State, (8 C. C. A.) 62 F. (2d) 150. It would be a proper remedy also as against any assignee of Toucey suing

to recover on Toucey's cause of action. The language of the Court of Appeals in the case cited (l. c. 154) is especially pertinent. As there, so here, it is evident that the contemplated action in the state court is for the purpose of relitigating the very questions which were litigated in this court and in this case.

3. Of course, this Court cannot enjoin Shay *eo nomine* nor *his attorneys* from prosecuting Shay's suit in the state court, unless Shay is brought within the jurisdiction of this Court and he has not been. This court can only enjoin the prosecution by Toucey, his agents and attorneys, of the cause of action heretofore litigated in this court. It can enjoin the prosecution of that cause by Toucey either in his own name or by an assignee. A temporary injunction, so limited, should issue. A form of temporary injunction may be submitted for approval and entry."

• • • • • • •

With petition in suit in equity filed in State court, *October*, 1935, transferred from State to Federal court and trial *held November*, 1936, petitioner *delayed one year and one month* for *Federal court trial* through no fault of his own nor so contributing to such delay, *part No.* 1 of Federal court decision rendered on *disability* would have legally forced *defendant* to meet *policy obligation* in *New York Life policy No.* 8 611 895 under *disability clause*, had trial occurred where started in *Missouri State court:* It is significant Federal court decision injected *Part No.* 2 on *disability decision*, and the Federal court itself points to this part of *disability decision* in this rendered opinion above quoted to consider had the Federal court decision been appealed, if decision overruled on *Fact No.* 1 *of decision*, Eighth Circuit Court of Appeals would undoubtedly affirmed decision on *Fact No.* 2 *of decision on disability.*

Any such legal argument as thus advanced by the Federal trial court in this opinion quoted, and any such legal phi-

losophy as thus expressed in such decision cannot, nor did the Constitution ever so intend, be affirmed by the Supreme Court of the United States by Supreme Court silence by not taking jurisdiction in this above entitled cause on writ of certiorari thus put before the Supreme Court of the United States and by this petition.

Lower courts cannot be permitted to overrule Supreme Court of United States law itself, as this Federal court trial and decision did so overrule even though affirmed by the Eighth Circuit Court of Appeals Eighth Circuit, also in error. There never existed a legal right for Federal court to enter this temporary injunction stopping State court jury trial in an action *In Personam*. No other argument seems necessary for the Supreme Court of the United States to overrule lower courts.

The leading case is the decision of the Supreme Court of the United States in *Dowell* v. *Mitchell*, 105 U. S. 430, 26 L. Ed. 1142.

Here complainant sought to foreclose a mortgage executed by a surviving partner to secure three notes on the partnership obligation. It appeared that the mortgage was upon the separate property of the deceased partner. Accordingly, the trial court held that the right to foreclosure was not established. Nevertheless, although denying the equitable relief, the trial court decreed a judgment against the surviving partner and the administrator of the deceased partner for the amount due on the notes.

On appeal, the Supreme Court held that the equity jurisdiction of the court failed; that accordingly it had no jurisdiction to render the judgment on the notes. It was said:

> "Without going into a discussion of the evidence on the subject, we declare our opinion to be that the circuit court was right in holding that the title to the property described in the mortgage executed by Brazell in

the name of the firm of Barron & Brazell had never been either in the late firm or in Brazell, but was in Barron, the deceased member of the firm at the time of his death, and that the date of the mortgage the title of the mortgage premises was in the heirs of Barron.

"When this fact was established by the evidence and found by the court below, its jurisdiction, sitting as a court of equity to proceed any further in the cause, was lost, and it was without authority to render a decree upon the notes which the invalid mortgage was intended to secure.

"When the court found there was no mortgage, there was nothing left for it to act upon but the promissory notes, and on that cause of action there was a *plain, adequate and complete remedy at law,* and it should have dismissed the bill without prejudice to an action at law.

"The rule is, that where a cause of action cognizable at law is entertained in equity on the ground of some equitable relief sought by the bill, which it turns out cannot, for defect of proof or other reason, be granted, the court is without jurisdiction to proceed further, and should dismiss the bill and remit the cause to a court of law. Russell *v.* Clark, Cranch 69; Price's Pat. Candle Co. *v.* Bawwen's Pat. Candle Co., 4 Kay & J. 727; Baily *v.* Taylor, 1 Russ. & M. 75; French & Howard, 3 Bibb, 303; Robinson *v.* Gilbreth, 4 Bibb, 184; Nourse *v.* Gregory, 3 Litt. (Ky.) 378".

THE FOREGOING CASE HAS BEEN APPROVED AND FOLLOWED IN MANY SUBSEQUENT DECISIONS, including the following:

American Falls Milling Company v. *Standard Brokerage & Distributing Co.,* 248 Fed. 487 (8th C. C. A.);
Linden Investment Co. v. *Honstain Brothers Co.,* 221 Fed. 178 (8th C. C. A.).

* * * * * * *

When the trial court found there was no "FRAUD" nor "CONCEALMENT", there was nothing left for it to act upon except the claim for "DISABILITY BENEFITS" under New York

Life Policy No. 8 611 895 "DISABILITY CLAUSE", and on that cause of action there was a *Plain, Adequate* and *Complete Remedy at Law*, and the *Dismissal* of the *Bill in Equity* was, *in Law*, without *Prejudice* to a subsequent action *in Law*.

The trial court RECOGNIZED but failed to give effect to the *Rule* when he said:

> "What I have thus far said fully determines the case. I think, however, that I should make one further finding of fact concerning the issue of fact that is involved in the case, although perhaps its decision, in view of what I have already said, is not absolutely necessary".

Conclusion.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers by granting a Writ of Certiorari and thereafter reviewing and reversing the said decision.

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